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INDIGENOUS ISSUES

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

Chairperson-Rapporteur: Mr. José Urrutia (Peru)

Introduction

Establishment of the Working Group

1. By resolution 1995/32 of 3 March 1995 the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held 18 meetings during the period 21 October-1 November 1996. A total of 401 people attended the meetings of the working group, including representatives of 52 Governments and 77 indigenous and non-governmental organizations.

3. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report both are used without prejudice to the positions of particular delegations, where divergences of approach remain.

4. This report contains a summary of the statements by various representatives of delegations attending the working group. For full and authoritative versions of the interventions, reference should be made to the statements of the representatives, as given. Many delegations made copies of their interventions available to the working group.

5. The working group was opened by a representative of the High Commissioner for Human Rights/Centre for Human Rights on behalf of the High Commissioner for Human Rights. It was reported that, in accordance with the procedures established by the Commission on Human Rights in its resolution 1995/32, a further 28 organizations of indigenous people had been accredited by the Economic and Social Council, bringing the total to 106.

6. At its 1st meeting, the working group unanimously re-elected Mr. José Urrutia (Peru) as its Chairperson-Rapporteur.

Documentation

7. The working group had before it the following documents:

Agenda (E/CN.4/1996/WG.15/1/Rev.1);

Communication received from Bangladesh (E/CN.4/1996/WG.15/CRP.1);

Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/1996/WG.15/CRP.2-7);

8. The following background documents were made available to the working group:

Technical review of the United Nations draft declaration on the rights of indigenous peoples: note by the secretariat (E/CN.4/Sub.2/1994/2);

Draft declaration on the rights of indigenous peoples as agreed upon by the members of the working group at its eleventh session (E/CN.4/Sub.2/1994/2/Add.1);

Note by the International Labour Office on comments on the draft United Nations declaration on the rights of indigenous peoples (E/CN.4/1995/119);

General Assembly resolution 50/157 on Programme of Activities for the International Decade of the World's Indigenous People;

Commission on Human Rights resolution 1995/32 on the establishment of a working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994;

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/45 on the draft United Nations declaration on the rights of indigenous peoples (annex).

Participation in the session

9. The following States members of the Commission on Human Rights were represented: Algeria, Australia, Austria, Bangladesh, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Denmark, Ecuador, El Salvador, Ethiopia, France, Germany, India, Indonesia, Italy, Japan, Malaysia, Mexico, Netherlands, Pakistan, Peru, Philippines, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

10. The following States Members of the United Nations were represented by observers: Argentina, Bolivia, Costa Rica, Estonia, Fiji, Finland, Guatemala, Honduras, Iraq, Morocco, New Zealand, Nigeria, Norway, South Africa, Spain, Sweden, Thailand and Viet Nam.

11. The following non-member States were represented by observers: Holy See and Switzerland.

12. The following United Nations body was represented by an observer: Voluntary Fund for Indigenous Populations.

13. The following specialized agency was represented by an observer: International Labour Office.

14. The following national institution was represented by an observer: Congreso de la Unión (Mexico).

15. The following non-governmental organizations in consultative status with the Economic and Social Council were also represented by observers:

General Consultative Status

World Confederation of Work and World Federation of Democratic Youth.

Special Consultative Status

Aboriginal and Torres Strait Islander Commission, Anti-Slavery International, Caritas Internationalis, Commission for the Defense of Human Rights in Central America, Commission of the Churches on International Affairs of the World Council of Churches, Consultative Council of Jewish Organizations, Four Directions Council, Indigenous World Association, International Centre for Human Rights and Democratic Development, International Federation of Human Rights Leagues, International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Organization of Indigenous

Resource Development, International Service for Human Rights, International Work Group for Indigenous Affairs, Inuit Circumpolar Conference, North-South XXI, Pax Christi International, Society for Threatened Peoples, Women's International League for Peace and Freedom, World Council of Indigenous Peoples and World Federalist Movement.

Roster

Grand Council of the Crees (of Quebéc), Indian Law Resource Center, International Movement Against All Forms of Discrimination and Racism, Minority Rights Group, Procedural Aspects of International Law Institute and Saami Council.

16. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers:

Aboriginal and Torres Strait Islander Social Justice Commissioner, Ainu Association of Hokkaido, American Indian Law Alliance, Asociación Napguana, Asociación Socio-Económico de Productores Indígenas del Tawantinsuyu, Asociación Tea-Amaro Runa, Assembly of First Nations, Association nouvelle de la culture et des arts populaires, Association of the Shor People, Black Hills Teton Sioux Nation, Catawba Indian Nation, Central Land Council, Chickasaw Nation, Chittagong Hill Tracts Peace Campaign, Comisión Coordinadora de Organizaciones y Naciones Indígenas del Continente, Comisión Internacional de Derechos de Pueblos Indígenas de Sudamérica, Comisión Jurídica de los Pueblos de Integración Tahuantinsuyana, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, Confederación Sindical Unica de Trabajadores Campesinos de Bolivia, Confederacy of Treaty Six First Nations, Consejo de Todas las Tierras, Consejo Inter-Regional Mapuche, Consejo Nacional Indio de Venezuela, Cordillera Peoples Alliance, Finno-Ugric Consultation Committee, Ikce Wicasa Ta Omniciye, Indian Confederation of Indigenous and Tribal Peoples, Indigenous Women Aboriginal Corporation, International Alliance of the Indigenous and Tribal Peoples of Tropical Forests, International Confederation of Autonomous Chapters of the American Indian Movement, Kimberley Land Council, L'auravetl'an Foundation, Lumad Mindanaw Peoples Federation, Lummi Indian Business Council, MAA Development Association, Mejlis of Crimean Tatar People, Mohawk Nation Council of Chiefs, Movimiento Indio "Tupaj Katari", National Aboriginal and Islander Legal Services Secretariat, New South Wales Aboriginal Land Council, Ngaiterangi Iwi Incorporated Society, Ngati Te Ata, Organisation for Survival of Illaikipiak Indigenous Maasai Group Initiative, Te Kamau Maro, Tuvenien Branch of the Public Association "Russia's Regions", Upper Sioux Community and Wellington Maori Legal Service Inc.

Organization of work

17. During the 1st meeting the provisional agenda was adopted. At the 3rd meeting the agenda was amended by including a fifth item entitled "Other matters".

18. In his opening statement, at the 1st meeting, the Chairperson-Rapporteur informed the working group that, as a result of his consultations, there was

broad consensus on the fact that the working group should adopt an adequate methodology in order to make progress with respect to its past session, when participants expressed their general views on the draft. It was now possible to receive from Governments and indigenous representatives concrete proposals concerning each article, in order to build a more clear and precise picture of all the different positions on this matter. In this regard, he submitted to the working group a timetable in which articles of the draft declaration were reclustered for the sole purpose of discussion, taking into account that it would be helpful to consider at the same moment those articles dealing with the same issue or closely related issues. This reclustering, based on the suggestions made in the technical review of the draft declaration (see E/CN.4/Sub.2/1994/2), was the result of the consultations held by the Chairperson-Rapporteur. He also stressed that this exercise should not be considered as a negotiation, that no changes would thus be made to the draft declaration at the present session, and that his final report would faithfully reflect all the positions and concrete proposals expressed by participants, without introducing any amendment to the draft.

19. At its 2nd meeting, the working group approved the Chairperson's proposal and therefore decided to allocate, at the end of the session, two meetings for a general debate and to consider the reclustered articles of the draft in the following order: [12, 13, 14]; [24, 29]; [1, 2, 43]; [42, 44, 45]; [5, 9, 32]; [15, 16, 17, 18]; [6, 7, 10, 11]; [19, 20, 22, 23]; [4, 8, 21, 33]; [25, 26]; [27, 28, 30]; [36, 37, 39]; [35, 38, 40, 41]; [3, 31, 34].

20. With regard to the organization of work, an indigenous representative read a statement, agreed upon by the caucus of indigenous peoples, calling for the immediate adoption of the "draft declaration on the rights of indigenous peoples" as adopted by the Sub-Commission without change, amendment or deletion as a statement of minimum standards. All indigenous nations, peoples and organizations present regarded the draft declaration as adopted by the Sub-Commission as the minimum standards for the promotion and protection of the fundamental rights of indigenous peoples. He called upon all participants at the present session to engage in a general debate on the fundamental issues and concepts of the draft while clarifying that indigenous peoples would not engage in a dialogue which would dilute or change the draft. Furthermore, he requested that there be a plenary consensus on a change of the internal rules of procedure guiding the working group specifically providing for the equal and full participation of indigenous peoples in its deliberations, including full participation as partners in the decision-making authority of the working group. Inherent in this request was the recognition that the report of the working group must be produced with the full involvement and consent of indigenous peoples. More importantly, it required that the draft declaration could only be transmitted to the Commission on Human Rights with the full and informed consent of indigenous peoples. The report must formally contain a request for the amendment of Commission on Human Rights resolution 1995/32 of 3 March 1995, to ensure the full and equal participation of indigenous peoples and nations in the working group. Finally, he repeatedly requested that government delegations respond to the statement and the proposals contained therein.

21. The comprehensive nature of the statement was reflected in the large number of statements of both regional groups of indigenous organizations and individual indigenous organizations in which support for the statement was expressed and the proposals contained therein reiterated.

22. The representative of Australia stated that the participation of indigenous peoples was absolutely fundamental to the process of elaborating a draft declaration. Adoption of a declaration would be meaningless if that process did not lead to an understanding on the part of indigenous and non-indigenous peoples and Governments of the contents of the draft and the reasoning and necessity behind it. Growing international and national awareness of indigenous issues had led to steady progress but problems remained which required further consultation and perhaps education. The draft as adopted by the Sub-Commission was a complex instrument that contained many issues that touched upon matters of governmental jurisdiction and the position of non-indigenous people in society. It was impossible for his Government at this stage to consider the declaration as adopted by the Sub-Commission as a whole and suggested that, at this point, comments on specific articles be put forward as a way of providing information and not to come to any conclusions. He concluded by proposing that, in practice, indigenous peoples should participate on an equal basis in the working group considering that the declaration must have the support of indigenous peoples to be successful. He urged participants to listen to each other and appealed to all participants to work through the text of the draft in a spirit of cooperation to avoid derailment of the process.

23. The representative of Denmark stated that his Government's position in its support of the draft as adopted by the Sub-Commission was clear. He expressed the wish to move forward considering that his Government considered adoption by the General Assembly a matter of urgency. Proceeding without the participation of indigenous peoples would be very unfortunate and render the resulting declaration meaningless. Ownership of the draft by all participants could only be established through dialogue and he urged contributions from all participants. Finally, he stated that although the working group was bound by its mandate and rules, it would interpret the rules as liberally as possible.

24. The representative of Canada reiterated his Government's commitment to achieving the goal of a declaration that reflected the unique place of indigenous people in the world; was universal in application; promoted reconciliation and the protection of indigenous rights; that worked effectively against discrimination; and provided clear and practical guidance for the development of effective and harmonious relationships between indigenous people and States. He recalled that at the first session of the working group, which he believed to have been a success and a landmark, it was clearly established that the basis for the work would be the "draft declaration on the rights of indigenous peoples" and that the completed overview of the draft had demonstrated broad support for the development of this important human rights instrument and the need for careful attention to its provisions. The input of the many organizations of indigenous people present would be indispensable for developing a strong and durable declaration and if the working group was to make progress, it was imperative that the full

range of positions be voiced and that States and organizations of indigenous people alike take up the challenge and bear responsibility for taking the working group significantly closer to the goal.

25. The representative of Mexico stated that as far as her delegation was concerned there were no easy or difficult articles. The delegation would follow the debate and make proposals which would promote the rights of indigenous people.

26. The observer for Norway stressed that the participation of indigenous organizations was absolutely fundamental. He assured participants that Norway wanted a strong declaration but that some provisions in the draft adopted by the Sub-Commission needed further work. While noting that amendment of the rules could only be done by the Economic and Social Council, he recommended that the rules be applied as flexibly as possible to assure real cooperation and assured indigenous participants of Norway's openness to dialogue and cooperation.

27. The representative of Chile said that he could not imagine a process without the full participation of indigenous peoples. It was vital that the declaration be adopted before the end of the International Decade of the World's Indigenous People but, in order to strengthen and not weaken the draft, some modifications, clarifications and corrections to certain articles were required.

28. The observer for Sweden stressed the vital importance of the participation of indigenous peoples in the working group and said that her Government fully supported the aim of adopting the draft declaration during the International Decade. The observer for Bolivia stated that the working group must continue its work and that indigenous peoples were welcome to participate in line with Commission on Human Rights resolution 1995/32. The working group could not fail to hear the comments of those most concerned. Furthermore, although it would be Governments that would approve the draft the withdrawal of indigenous peoples from the process would not be beneficial.

29. The observer for Fiji said that should the working group fail to produce substantial results the wrong political signal would be sent to the world. Cooperation and partnership between Governments and indigenous representatives would be needed and they both had grave responsibilities in that respect. The participation of indigenous peoples was fundamental to the draft declaration. Furthermore, Fiji would happily seek the adoption of the draft as adopted by the Sub-Commission but other Governments had not completed their review of the draft or fully addressed domestic constituencies on the issue. He therefore appealed to indigenous peoples to recognize that Governments did need more time before they could adopt a more definitive position on the draft declaration as a whole, and on individual provisions. He also said that consultation should not lead to delay.

30. The observer for New Zealand expressed the belief that it would not be possible to resolve all the very difficult issues that had to be addressed by the working group at the current session since the process towards consensus would take time and involve negotiation and compromise on all parts. It was essential that the views and objectives of indigenous people should continue

to be heard in the working group. The representative of Ukraine stressed that it was important to preserve the partnership between participants and that while considering the mandate of the working group all interested parties could provide their comments, further constructive dialogue would benefit all.

31. The representative of the United States of America stated that his Government had fought hard within the Commission on Human Rights to ensure that tribal governments and organizations of indigenous people not in consultative status with the Economic and Social Council would have an opportunity to participate in the working group and that the working group needed all of their insights.

32. The representative of Peru pointed out that the working group could not digress from its sole mandate of drafting a declaration. He expressed confidence that the final report would reflect the legitimate concerns of the indigenous people with relation to the mechanisms for participation and stated the view that the Commission on Human Rights and the Economic and Social Council should study complementary means of ensuring greater participation of indigenous people than currently existed.

33. The representative of Colombia underlined the importance of the participation of indigenous people in the debate on the draft declaration and expressed concern about the proposal by indigenous peoples that the Sub-Commission's draft be adopted without change as well as the proposal to modify the rules of procedure. The delegation would support any decision the Chairperson thought appropriate in order to make the session a success.

34. The representative of the Russian Federation stated that the full participation of indigenous peoples was vital and that without it the work of the working group would be meaningless. Progress in the adoption of the declaration could only be achieved through dialogue. The report of the working group should reflect the indigenous peoples' voice. He commented that the rules of participation had been flexible within the working group.

35. The Chairperson-Rapporteur stated that he considered that all the concerns expressed in the indigenous caucus statement were valid and merited the special attention of all the governmental delegations to the working group. He had worked towards the creation of an open climate of discussion within which indigenous people could express their views in their entirety and in total freedom. The report of the session would specifically reflect the concerns expressed by the caucus of indigenous people concerning the need to study additional forms and mechanisms that would permit greater participation of indigenous people in the working group. The draft as adopted by the Sub-Commission was the basis of the work of the working group and the present session was not an exercise of modification and drafting. He hoped that a constructive exchange of the different opinions would allow the United Nations to adopt a declaration on the rights of indigenous people that would ensure their effective protection.

36. In a further statement of the indigenous caucus, an indigenous representative stated that it must be explicitly recognized that indigenous nations and peoples were equal participants in the working group and not "observers" and that they should have full input in the drafting of the

reports of the sessions of the working group. Furthermore, indigenous peoples must be equally able to recommend how the work of the working group was to proceed and to play a direct role in the development of the agenda and all other decision-making processes of the working group. He proposed that Governments should discuss with indigenous peoples, both individually and collectively, a change of the rules of the working group with a view to securing full and equal indigenous participation. This was felt to be a reasonable proposal that fell within the mandate provided to the working group by the Economic and Social Council. The indigenous caucus formally requested that delegations seriously consider the proposals, which were intended to offer constructive solutions to the practical problems that had come to light at the session. No one wanted to waste valuable time on procedural wrangling, but it was important to all indigenous delegations present that these matters be properly addressed. In closing, he expressed appreciation for the efforts of the Chairman-Rapporteur and the patience of all those present.

37. Support for the statement was expressed in several joint and individual statements by indigenous organizations.

38. Following consultations, participants agreed to first hold a general debate on the fundamental issues and concepts of the draft declaration adopted by the Sub-Commission after which participants would comment on the operative paragraphs of the draft without, however, undertaking a drafting exercise. This amendment to the organization of work was adopted.

39. The observer for the Indian Law Resource Center proposed that the full and equal participation of indigenous peoples in the working group be ensured. She recommended that the working group request the Commission on Human Rights to hold a series of technical meetings to consider modalities of participation.

40. Many delegations felt it was important that steps be taken to consult with organizations of indigenous people before the next session of the working group. Accordingly, the working group recommended that the Commission on Human Rights take this into account in the action it takes on this report.

41. At the 18th meeting, the present report was adopted by the working group.

General debate

42. The observer for Bolivia stated that his Government generally supported the draft adopted by the Sub-Commission considering that it contained the minimum standards for the protection of indigenous peoples and was in line with national legislation. He stressed that Bolivia believed it was fundamental to use the term "indigenous peoples" and reiterated the hope that the General Assembly could adopt the declaration as soon as possible in the framework of a consensus. The representative of Chile said that the Sub-Commission's draft constituted a solid basis for the work of the group and that the search for better wording should not distort the meaning of the draft. Chile supported the use of the term "indigenous peoples" but self-determination could not become a threat to the territorial integrity of States.

43. The observer for Fiji reported on a workshop hosted by his Government which attracted the participation of more than 30 indigenous participants from the Pacific region. The purpose of the so-called Suva Workshop was to strengthen capacity, and to disseminate as widely as possible information on the substantive aspects of the draft declaration and how it would affect indigenous peoples. The Suva Workshop had been unanimous in its full support for the draft declaration in its present form and, moreover, it had agreed that the existing language should be retained and, where possible, strengthened. Participants had also joined a general consensus that efforts by some States to undermine the existing language should be actively resisted by indigenous peoples and Governments supportive of them.

44. The representative of Mexico referred to article 1 of International Labour Organization Convention No. 169 and noted that the use of the term "indigenous peoples" should not imply rights that could be conferred in international law. He referred to the Mexican Constitution and in particular article 4 which recognized the multicultural composition of his country. He stressed that indigenous people had a right to development, which included the right to participate in economic, social, cultural and political development. He expressed the hope that the draft declaration would be based on existing human rights norms, in particular ILO Convention No. 169.

45. The observer for Finland stated that, contrary to what had been argued in the working group, Finland was of the opinion that the language of the draft declaration, which his Government believed to define minimum standards, was not at all incompatible with corresponding United Nations instruments. With regard to the obligations of States, the language of the draft was similar to that of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Finland supported the use of the term "indigenous peoples" since it made meaningful the great number of collective rights in the draft. Finland was also ready to accept the term "self-determination" since this right of all peoples was a fundamental principle of international law and carried with it a duty on the part of States to promote it. He referred extensively to recommendation No. XXI (48) of the Committee on the Elimination of Racial Discrimination which emphasized that one had to distinguish between internal and external aspects of the right to self-determination. According to the Committee, the internal aspect meant that all peoples had the right to pursue freely their economic, social and cultural development without outside interference, while the external aspect implied that all peoples had the right to freely determine their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition on subjecting peoples to alien subjugation, domination and exploitation. The Committee had pointed out that Governments should be sensitive towards the rights of persons belonging to ethnic groups but emphasized that the Committee's activities should not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

46. The observer for Switzerland reiterated the urgency of adopting a declaration of substance which, through its clarity and conciseness, would be widely understood and accessible and would be an important political signal by

the international community. Her Government felt that there were enough elements available to understand the term "indigenous peoples", which her Government preferred, without defining it. Switzerland, with a tradition of federalism and direct democracy, was very sensitive to the rights of minorities and the cohabitation of different cultures free to define themselves, peacefully, as peoples. Switzerland, despite its diversity, had remained a unitary State through the application of the principle of subsidiarity which resulted in the cantons having broad powers, in particular with regard to education. Her Government believed that such a concept could also be applied to the situation of indigenous peoples.

47. The representative of the United States of America emphasized his Governments's strong support for the goal of protecting indigenous rights, both at home and abroad, particularly those pertaining to the freedoms of religion, speech and association. His Government viewed the adoption of a draft declaration as being of critical importance.

48. The observer for New Zealand said that to achieve a declaration that would be applicable to and for the benefit of indigenous people in all parts of the world, some very difficult issues had to be addressed by the working group. Not all the issues would be resolved at the current session. The process towards a consensus declaration would take time and would involve negotiation and compromise by all involved. She added that indigenous people had for a long time made a substantial effort in order to set clearly before the international community their views and objectives. It was appropriate, indeed essential, that their views continue to be registered in the working group. The representative noted that following the general election held in New Zealand on 12 October, negotiations were under way among the political parties represented in the new Parliament to determine who had the necessary level of support to form the next government. A convention on caretaker government currently applied and it was thus not appropriate for the delegation to make detailed statements on the New Zealand position for the time being.

49. The representative of Peru stated that his Government could accept the majority of the articles as adopted by the Sub-Commission but regarded certain articles as contradictory and impractical in their applicability. It was his Government's national experience that it was possible, through constructive dialogue, to develop practical solutions that guaranteed indigenous peoples different high levels of self-government which took into account the concerns and rights of States. In order to come to precise formulations within the draft, especially with regard to self-determination, it would be necessary to simultaneously advance towards a solution with respect to some Governments' concerns with regard to the absence of a definition of "indigenous peoples". The representative of the Russian Federation stated that many articles of the draft were acceptable to his Government but that some needed modification.

50. The observer for the International Labour Office stated that, while ILO Convention No. 169 had been adopted as a minimum standard for the protection of indigenous peoples in the countries where they lived and to establish procedures by which their active participation in the economic and social life of their countries was ensured, the working group had the task of framing an inspirational document that could reflect the hopes of indigenous peoples. It

was therefore essential that the declaration, once adopted, should not fall below the standards set in a very recent international convention, but should follow the guiding principle in the development of human rights law that each new instrument should be consistent with earlier instruments and constitute a progression. Referring to a previous statement, she reiterated that the ILO conventions dealing with indigenous and tribal peoples had encountered no particular problems of application because of their lack of definition. Instead, they laid down criteria by which their coverage in individual cases was determined, and left to the national parties to determine precisely the groups covered. ILO Convention No. 169 included the vital concept of self-identification which the ILO regarded as essential. She quoted a statement the ILO representative had made to the Sub-Commission's Working Group on Indigenous Populations in support of a recommendation put forward by the Chairperson-Rapporteur to the effect that those involved with the active participation of those directly affected must adopt some objective criteria to determine who was covered by international law without inserting an "external" definition into the declaration. Finally, the ILO representative offered to share the ILO's experience in achieving the indigenous peoples' participation in the ILO's own standard-setting on this subject.

51. The observer for Argentina expressed support for the efforts being undertaken by the working group and stressed that the Argentine Constitution, amended in 1994, expressly recognized the ethnic and cultural pre-existence of the Argentine indigenous people, recognized the right to a bilingual and intercultural education, their juridical personality, and the possession and communal property of the lands that they traditionally occupied. Besides, the Congress was to legislate on the lands to be granted and on indigenous participation in decisions concerning natural resources and other interests that might affect them. The constitutional amendment was the result of constructive dialogue and active participation of the interested parties and that is why she envisioned a declaration that should satisfy the aspirations of the indigenous peoples and, at the same time, receive international support. This was the spirit that must prevail.

52. The representative of Bangladesh stated that the envisaged declaration was to be a universal declaration covering the situation of all indigenous people of the world. The text had evolved from a region-specific situation and there was scope for further strengthening the draft so as to reflect appropriately the fullest range of the diverse situations of all indigenous people of the world, including indigenous people who, as a result of the process of decolonization, had attained statehood.

53. The observer for the Grand Council of the Crees said that it wanted the working group to recommend to the Commission on Human Rights that it approve the text as approved by the Sub-Commission without changes, deletions or amendments. Each item in the draft was based on the experience of indigenous peoples and was the product of substantial compromise on their part and, as such, could only provide a minimum standard of protection of rights. The draft did not create special rights for indigenous peoples but at least corrected the fact that existing human rights instruments had failed to protect the rights of indigenous peoples. The declaration was therefore directed to the effective and full application of international standards to all peoples, including indigenous peoples, and with that in mind, nothing in

the draft should offend the sensibilities of any State or Government that valued and respected the human rights of all peoples. The Grand Council placed particular emphasis on respect for the exercise of the right of self-determination of indigenous peoples, and on the principle that States should respect the obligation to obtain the full and informed consent of indigenous peoples before they commissioned any procedures which affected their territories or environment. He cited the threat of unilateral breakaway from Canada of the Province of Quebec and its effects on existing constitutional, citizenship and treaty rights, and the consequent denial of the right to self-determination as an example which demonstrated the need for the full exercise of self-determination by indigenous peoples.

54. The observer for the Cordillera Peoples Alliance stated that the draft declaration constituted a minimum standard for the protection of the rights of indigenous peoples and called upon the working group to adopt the text as it stood. The Lumad Mindanaw Peoples Federation also supported adoption of the draft declaration without changes.

55. The observer for the Saami Council stated that the draft represented minimum universal standards for the rights of indigenous peoples and should therefore not be weakened. He considered adoption a matter of urgency. The Saami Council saw a clear causal link between the absence of a universal instrument protecting the rights of indigenous peoples and the problems faced by indigenous peoples. It was possible to resolve any questions relating to the right of self-determination and indigenous rights over lands and related resources if all were willing to interpret them in the right context based on the situation of indigenous peoples. He referred to the principle of equality of indigenous peoples with other peoples.

56. The observer for the Chittagong Hill Tracts Peace Campaign stated that the draft was the minimum standard to promote and protect the rights of indigenous peoples. He expressed his concern that some Governments wanted to define indigenous peoples in an attempt to water down the draft.

57. The observer for the Indian Confederation of Indigenous and Tribal Peoples stated that the draft was an expression of the minimum acceptable standards of the rights of indigenous peoples and called upon the working group to recommend immediate adoption so as to enable it to be a true instrument of empowerment to the indigenous peoples, enabling them to determine their own future as equal partners in the world community.

58. The observer for the New South Wales Aboriginal Land Council in a joint statement with several other indigenous organizations from Australia stated that the right of self-determination was undeniably the cornerstone of their indigenous rights and the inclusion of a weakened expression in the draft would be unacceptable not only to indigenous peoples but also to others who supported the indivisible, universal and non-discriminatory nature of human rights. The collective nature of indigenous rights were a direct application of the right of self-determination and a direct expression of their right to exist as distinct peoples. Although the draft did not entirely reflect their positions they supported it as an articulation of minimum standards. The reasons for these broad positions were that the draft was a comprehensive articulation of interrelated principles which had been identified over

decades, that the principles in the draft were drawn from presently recognized international human rights law, that they had been analysed in the context of the historic and continuing violation of these rights, that the principles offered guidance as to how to remedy this situation, and that the participants in the process of elaboration had included indigenous peoples, various non-indigenous non-governmental organizations, independent internationally recognized scholars, lawyers, and governmental and intergovernmental representatives.

59. The observer for the Indigenous World Association stated that the draft was only a step forward in addressing the subjugation of indigenous peoples and was the framework for treating indigenous peoples with respect and gave them the protection they must have in order to survive under repressive nation-States. It provided indigenous peoples with a legal basis through which they could insist on the protection of their collective rights and their right to political, economic and cultural survival. He therefore insisted on adoption as minimum standards, without dilution, and stated that it must not take another 12 years of debate before adoption.

60. The observer for the International Organization of Indigenous Resource Development stated that the draft was an accurate statement of customary international law and practice and that the rights therein had arisen from history and morality. Elaboration of the draft was not a legalistic exercise but one of declaring important human rights. Indigenous peoples fell at the bottom of every indicator of social and economic well-being owing to the fact that their right to self-determination was not recognized. Self-determination was a basic human right that all indigenous peoples had by virtue of their existence and meant nothing more than the ability of a group to survive with its own identity. Another observer for the same organization stated that the right of self-determination was fundamental to all their work. He also stated that the related fundamental principle of consent was of major importance and that treaties were international agreements reflecting a nation-to-nation relationship with the Crown. The spirit and intent and indigenous understanding must be honoured and respected. As far as indigenous peoples were concerned, treaties were evidence of the right of self-determination. He called upon the working group to recommend to the Commission on Human Rights, the Economic and Social Council and the General Assembly that the draft be approved as it presently stood.

61. The observer for the Ikce Wicasa Ta Omniciye maintained that in order to ensure that the declaration was not used as a tool for the destruction of indigenous peoples, the existing language must remain without amendment and requested that the draft be adopted as the minimum standards of protection of the rights of indigenous peoples and nations.

62. The observer for the Aboriginal and Torres Strait Islander Commission reiterated the statement of the Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of indigenous delegations from Australia. He stated that the draft reflected a consensus of all the participants in the elaborating process on the historical and contemporary experiences of indigenous peoples, on their perspectives and aspirations and as such was neither theoretical nor abstract but represented the absolute minimum standard of protection. Furthermore, the draft did not create any special rights or

privileges but instead sought to correct the fact that international standards had not been applied equally to all peoples and that international human rights instruments had failed to protect indigenous rights and freedoms. He recalled that the joint position of the indigenous delegation from Australia was that the integrity of the draft depended upon an unqualified recognition of the right of indigenous peoples to self-determination as the pillar upon which all other provisions of the declaration rested. The language of article 3 must remain unaltered. Without recognition of their collective rights as peoples, the declaration could not adequately protect their most basic interests; the article was thus an indispensable feature of the draft. Individual human rights would not be weakened by a reference to collective rights of indigenous peoples, but instead would complement, and indeed strengthen, the individual rights of 300 million indigenous persons. Referring to article 2, 4(a) and 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 6(1) of the 1978 UNESCO Declaration on Race and Racial Prejudice, articles 19-24 of the African Charter on Human and Peoples' Rights, the international prohibition of genocide, as well as rights to peace, permanent sovereignty over natural resources, a clean and healthy environment, development and self-determination, he stated that the draft was not the first international instrument to attribute rights to collectivities.

63. The observer for the Miccosukee Tribe of Indians of Florida stated that as the world continued to democratize, we must not forget to recognize the rights of indigenous peoples and should therefore unanimously approve the 45 articles of the draft.

64. On 1 November 1996, the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, addressed the Working Group at its closing meeting. He reaffirmed the interest of his Office in the ongoing work on the draft declaration and offered to facilitate informal consultations and information meetings to promote greater understanding of the draft declaration. He expressed the hope that the draft declaration would be adopted by the General Assembly within the Decade. He also referred to his decision to establish, in the light of the restructuring of the Centre for Human Rights, an indigenous project team to coordinate these activities.

65. In his closing statement, the Chairperson-Rapporteur of the Working Group, Mr. José Urrutia, stated that the delegations of Governments and indigenous peoples representing millions of human beings were undertaking a fundamental and innovative process which would produce important changes in contemporary international law. He underlined the importance of looking for new and imaginative ways of strengthening the participation of indigenous peoples in the working group. He also stressed the need for flexibility and dialogue between all the participants. In his capacity as chairperson, he undertook to hold informal consultations with representatives of Governments and indigenous organizations over the ensuing 12 months, in order to build upon the dialogue that had been initiated. He expressed his appreciation to the spokesperson of the indigenous caucus for his constant willingness to have open dialogue and acknowledged the support provided by the secretariat team.

Articles 12, 13 and 14 and articles 24 and 29

66. The representative of Brazil stated that his Government supported wholeheartedly articles 12, 13 and 14 since they were essential to the survival of indigenous people. However, they deserved further elaboration considering the overall question of intellectual property in the declaration and the possible contradiction with national and international laws. In that respect he suggested deleting the words "archaeological and historical sites" in article 12 in light of a national responsibility for preservation.

67. The representative of France expressed the general concern that the declaration must be in accordance with other human rights standards. In light of this, she stated, the objective to protect indigenous traditions and customs as laid down in articles 12, 13, and 14 did not pose a problem in principle but rather in practice where these traditions were not in line with human rights standards or national law. She also stated that the application of article 14 could not prevent the use of the national language.

68. The representative of Japan stated that with regard to article 12 property ownership and expropriation under national law had to be taken into account. With regard to the second paragraph of article 13 he said that politics had to be separate from religion. He pointed out that a declaration was by definition non-binding and therefore the phrase "shall take effective measures" in the second paragraph of article 14 was too strong. He furthermore stated that his Government supported the use of the term "indigenous people".

69. The observer for Switzerland stated that the declaration had to be in conformity with human rights standards. She referred to the Universal Declaration of Human Rights as a cohesive human rights instrument which, therefore, had been widely disseminated. She said that articles 12 and 13 had to be redrafted so that they would read better, were not repetitious and were easier to understand. She also stated that the second paragraph of article 14 went beyond protection and should therefore form a separate article to underline its importance.

70. The representative of Ukraine requested clarifications with regard to the second paragraph of article 14 as the wording, style and sense were not very clear. She pointed out that indigenous people, in general, did not get involved in legal proceedings. In her understanding, that part of the article aimed at establishing a mechanism to the protect political and civil rights of indigenous people. She said that further work was necessary on articles 12, 13 and 14.

71. The representative of China stated that articles 12, 13 and 14 were important and agreed with their contents. However, since they contained cultural rights they should be placed after Part VI of the draft which contained civil and political rights. Articles 16, 24 and 29 and articles 12, 13 and 14 dealt with similar rights and should therefore be grouped together.

72. The representative of Mexico stated that article 14 should be placed in a broader framework and suggested comparison with article 12 of ILO Convention No. 169 with regard to access to justice. She supported the suggestion made

by the observer for Switzerland. The representative of Ecuador stated that in principle his Government had no objections to articles 12, 13 and 14 but that he would be receptive to more precise wording.

73. The representative of Chile stated that his Government could adopt the present wording of articles 12, 13 and 14 without much difficulty. He considered the suggestion of the representative of Brazil to delete the words "archaeological and historical sites" not very well founded. He suggested looking for new wording that took the concerns into account but retained the two concepts. He also suggested adding to article 12 a paragraph similar to that of the second paragraph of articles 13 and 14 to allow States to determine how to protect and preserve.

74. The observer for the Grand Council of the Crees reminded participants of the practical importance of articles 12, 13 and 14 and that the articles were not abstract but placed in the draft because of specific problems indigenous peoples faced which had not been adequately protected by existing international instruments. With regard to a concern expressed by the representative of France, he stated that nothing in the draft prevented the use of the national language.

75. The representative of Malaysia said that his Government accepted the general thrust of articles 12, 13 and 14. With regard to article 12, he said that he shared the concern of the representative of Japan concerning property ownership and requested that a clear definition of "spiritual property" be provided. Concerning article 13, he said that the right to repatriation had to be qualified according to the circumstances and more narrowly defined. He said that the "measures" to be taken by States according to the second paragraph of article 13, should be defined. He also requested further clarification of the second paragraph of article 14 which he considered vague; the term "political proceedings" was unclear.

76. The observer for Sweden said that her Government had some difficulties with regard to "restitution" as found in article 12 and suggested the deletion of the text after the word "literature". She said that the traditions referred to in article 13 should not conflict with universal human rights norms and suggested insertion of the phrase "in accordance with recognized human rights norms" after the word "ceremonies". The second paragraph of article 14 was unclear in its use of the phrase "where necessary" and that measures only had to be taken when there was a real problem of communication.

77. The representative of the Philippines stated that the second paragraph of article 14 should be clarified and suggested that articles 12, 13 and 14 be consolidated in one or two articles. Her Government shared the concerns expressed by the representative of Brazil concerning the protection of archaeological and historical sites and also raised the issue of the meaning of spiritual property.

78. The representative of the Netherlands associated himself with the concerns of the Governments of France, Switzerland and Sweden that the exercise of the rights contained in articles 12 and 13 could not run contrary to general human rights law. He therefore suggested the inclusion of a safeguard clause.

79. The representative of Brazil fully supported adoption of article 24 as it stood, considering that the issue of traditional knowledge was of the utmost importance. Article 29 needed to be strengthened; he proposed the addition of a third paragraph which would read: "They also have the right to a fair and equitable sharing of the benefits arising from the utilization, including commercial utilization, of their traditional knowledge."

80. The representative of Canada stated that article 12 identified two elements: the protection and development of culture, and the restitution and return of property, which perhaps should be addressed in two separate paragraphs. His delegation considered that States should facilitate, subject to national laws, the efforts of indigenous people to maintain, protect and develop manifestations of their cultures, while respecting the legitimate rights of others. There was a positive evolution at both the international and national levels with respect to the return of cultural property on which the provisions of the declaration should build. With regard to article 13, he noted that Canada supported the principles though access to sacred sites in privacy would require a balancing of interests which respected the legal rights of others under domestic laws. He also stated that his delegation fully agreed with the principle contained in the first paragraph of article 14. The second paragraph dealt with civil and political rights, rather than cultural, religious and linguistic rights, and he suggested it be moved to Part V of the draft. He believed that on this issue there should be consistency with international instruments, notably international humanitarian law. It was unclear what "other appropriate means" might be. Furthermore, Canada did not agree with the suggestion of the Technical Review to move article 24 to Part III, considering that traditional medicine's complementary use could be better emphasized by leaving the article in Part V. He suggested a broad interpretation of the second paragraph of article 24 to address the issues of nutrition, pre- and postnatal care and substance abuse. He suggested adding a paragraph on children in Part V. He added his support to the suggestion of the Technical Review that article 29 on intellectual property be moved to Part III. At present, only a broad statement of principle should be included to the effect that indigenous people had the right to a fair and equitable sharing of the benefits arising from commercial utilization of their knowledge along with an acknowledgement of the rights of third parties. The working group must also take account of the outcome of ongoing and future work in other forums.

81. The observer for Finland stated that the second paragraph of article 14 should be amended to the effect that indigenous peoples could use their own language, not just one they could understand. He also stated that the contents of article 29 were encouraging.

82. The representative of France stated that the right to traditional medicines and health practices as contained in article 24 should be in line with standards of public health set by organizations such as the World Health Organization. The scope of the right to the "protection of vital medicinal plants, animals and minerals" contained in article 24 should be defined. Article 29 contained provisions for positive discrimination and thus gave rise to certain concerns. She also wanted more discussion and clarity on the measures to be provided by States.

83. The representative of Australia said that all the comments by his delegation were preliminary and that his Government would wish to give further consideration to the draft before taking final positions. He expressed his Government's concerns over the rights of third parties to ownership within the framework of article 12. He also expressed a general concern with regard to the feasibility and practicality of restitution concerning past acts and pointed out that there was a link with article 27 that dealt with restitution of land. Article 13 was generally consistent with international and domestic Australian law but he would wish an exchange of views on the content of the term "intellectual property". With regard to article 14, he expressed concern with regard to eventual resource implications and stated with regard to the second paragraph that the phrase "whenever any right of indigenous peoples may be threatened" was too broadly worded, especially the word "may". The second paragraphs of articles 13 and 14 were prescriptive and therefore did not belong in a declaration. Furthermore, in a federation it was not just the central Government that had to take measures to protect rights. On article 24, he requested further clarification with regard to the right laid down in the first paragraph and also wished to know the meaning of the term "special measures" in the second paragraph of article 29. In that respect he wondered whether this term carried the same meaning as in the International Convention on the Elimination of All Forms of Racial Discrimination. He concurred with the representative of Canada that recent and ongoing developments had to be taken into account with regard to the protection of intellectual property, particularly under the Convention on Biological Diversity.

84. The representative of Peru stated that his Government fully agreed with the text of article 24 but considered that article 29, although fundamental, could be improved and strengthened. In that respect, he referred to the proposal by the representative of Brazil to add a paragraph as being positive.

85. The observer for Argentina suggested more precision concerning the laws implied because the amended Constitution provided for pluralism and the respect of culture and tradition. In that sense, she proposed substituting "their" laws for "the" laws in order to achieve greater clarity in this important issue. All articles were broadly consistent with human rights instruments but the latter part of article 14 should be more precise, especially if it was to take into account the financial possibilities of States. The application of article 24 was important and necessary but should not contravene public health regulations.

86. The representative of Malaysia expressed support for article 24 but wanted further discussion on the scope of the rights to use traditional medicines and health practices to ensure that they did not harm the health of the practitioner. With regard to article 29, he expressed doubts as to the phrase "special measures".

87. The observer for the International Organization of Indigenous Resource Development suggested specific wording for articles 12, 13, 14, 24 and 29 by reading out the text of the articles in the draft.

88. The observer for the International Indian Treaty Council called for the adoption of the draft as adopted by the Sub-Commission as minimum standards

for the protection, promotion and recognition of the rights of indigenous peoples. She wanted to put on record that her organization opposed any changes in the wording of articles 12, 13, 14, 24 and 29 as they were an integral part of the draft.

89. The observer for Tupaj Katari stated that article 12 tried to establish legal protection for cultural traditions and customs in order to preserve the identity of indigenous peoples. The Special Rapporteur on the protection of the cultural heritage of indigenous people had placed her study within the overall framework of self-determination and the working group should do the same. He suggested moving articles 24 and 29 to Part III. The observer for Ikce Wicasa Ta Omniciye stated that the text of articles 12, 13 and 14 as minimum standards, should not be amended.

90. The representative of the United States of America expressed his support for the basic thrust of the articles. However, the wording of article 12 was overbroad, in particular the open-ended obligation of restitution of cultural and similar property which at present was not a rule of international law. His Government supported articles 13 and 14 and believed that they could be adopted with some minor drafting changes emphasizing the aspirational nature of the document. His Government also believed that article 13 could be strengthened by adding the phrase "and associated funerary articles" at the end of the first paragraph. With regard to article 29, he said that individuals belonging to indigenous populations should be accorded rights with respect to intellectual property but that the second paragraph appeared to extend the right of indigenous people beyond those normally accorded to other members of the State.

91. The representative of the Russian Federation expressed support for the statement of the observer for Sweden that the declaration could not contradict existing human rights, and noted that a balanced approach must be taken between national laws and the rights of indigenous people. His delegation had no substantial objections to articles 12, 13 and 14. The second paragraph of article 14 needed some work and could perhaps be regrouped with articles 24 and 29. The second paragraph of article 24 could be redrafted to make its central aim of health protection clearer and could be grouped with article 28 which contained similar language. With regard to article 29, he believed that an exhaustive list was unnecessary and that general terms would serve the objectives of the document better.

92. The observer for the Indigenous Woman Aboriginal Corporation noted that the draft did not invent new human rights standards: articles 14.3, 18.1 and 27 of the International Covenant on Civil and Political Rights, article 18 of the Universal Declaration of Human Rights, article 1 of the Declaration on the Elimination of All Forms of Racial Discrimination, articles 12 and 28.3 of ILO Convention No. 169, and article 14.3 of the Declaration on Minorities were all similar to articles 12, 13 and 14. She also said that translation of needs and aspirations into rights did not always allow for the use of similar language in other instruments. In response to governmental concerns over the resource implications of certain articles, she pointed out that the implementation of all rights had resource implications. With regard to governmental concern over possible contradiction between the draft and existing human rights standards, she called for more respect from Governments

when they spoke of cultures they had little knowledge of. Aboriginal customary law was dynamic, and certain rights in the draft, such as those in articles 1, 5 and 8, ensured consistency.

93. The representation of Chile pointed out that Chile looked at article 24 as a right of indigenous peoples to their traditional medicines and health practices using their plants and animals, while the second paragraph provided them with a choice of health care. His Government generally supported article 29 but noted that the Spanish version read "Tienen derecho a que se adopten medidas especiales" while the English version, which he regarded to be the original, read "They have the right to special measures." He urged the secretariat to review the different language versions to avoid discrepancies.

94. The observer for Norway noted that Part III was perhaps the least problematic of the draft. Norway supported article 12 but would like to see certain terms, such as restitution, clarified. With regard to article 13, he also expressed support but requested a more careful formulation to take into account the need for privacy in other areas than religion. Concerning article 14, he noted that the second paragraph had been taken from article 12 of ILO Convention No. 169. Care should therefore be taken that any amendment to this language did not weaken the principle. He suggested that articles 24 and 29 be moved to Part III.

95. The observer for the Cordillera Peoples Alliance said that articles 12, 13 and 14 were all very important in light of efforts undertaken to control indigenous knowledge, traditional medicine, and cultural and ceremonial expressions of indigenous peoples by national and international corporations. She called for the adoption of the draft without amendment.

96. The observer for the Chikasaw Nation said that the working group would do well to take the opinions of indigenous peoples into account considering that the United Nations might not be well informed about their problems, while their ideas came from experience. He called for the adoption of articles 12, 13 and 14 without amendment.

97. The observer for the World Council of Churches suggested changing the phrase "religious and spiritual property" to "religious and spiritual assets" in article 12. With regard to article 13, he felt it would be appropriate to add the words "communally" or "collectively" after the phrase "in privacy" since the ceremonies referred to were usually held that way. Concerning article 29, he noted that the phrase (as drafted in the Spanish version) was a reflection of the right of self-determination.

98. The observer for the New South Wales Aboriginal Land Council presented a joint statement on behalf of the Australian indigenous delegations. He stated that article 24 did not create new standards and referred in this respect to article 12 of the International Covenant on Economic, Social and Cultural Rights and article 25 of ILO Convention No. 169. He also stated that article 29 did not create new standards and referred to chapter 26 of the Rio Declaration, the preamble and article 8 (j) of the Convention on Biological Diversity, principle 13 adopted at the Fourth General Assembly of the World Council on Indigenous Peoples, the Mataatua Declaration on Cultural and Intellectual Property Rights, and the Suva Workshop held recently in Fiji.

99. The observer for the World Council of Indigenous Peoples stated that the indigenous heritage should be protected within the boundaries of States and called for the adoption of articles 24 and 29 as they stood.

100. The observer for the Indigenous World Association also called for the adoption of articles 24 and 29 especially in light of his concerns about the continued development of archaeological science and its effects on indigenous peoples' sacred sites.

101. The observer for the Association nouvelle de la culture et des arts populaires called for the adoption of articles 12, 13, and 14 as drafted since they were of critical importance.

102. The observer for the Chittagong Hill Tracts Peace Campaign stated that cultural rights depended on political rights and that therefore the draft should be considered as a whole.

Articles 1, 2, 42, 43, 44 and 45

103. The representative of the United States of America said that article 1 was acceptable and should be widely supported, subject to satisfactory resolution of the use of the term "peoples". It was important to emphasize that indigenous people, like all persons, were entitled to enjoy all basic human rights and fundamental freedoms. His Government found the general thrust of articles 2, 42 and 44 acceptable. Article 42 might encourage States to take measures beyond the rights affirmed and the policies agreed to in the declaration. Article 43 was acceptable as drafted.

104. The observer for New Zealand expressed support for the intent of articles 1 and 2 and for article 43, and said that it was important that the rights and freedoms referred to in the draft declaration should apply equally to female and male indigenous people. The principles underlying articles 42, 44 and 45 were acceptable. However, it was important to ensure that the language in the draft declaration was consistent with existing international human rights instruments.

105. The observer for Finland expressed strong support for articles 1, 2, 42, 43, 44 and 45. Article 43 could be moved to Part I of the draft. Besides that, the six articles were acceptable without any amendments, changes or deletions. It was also important that the draft declaration should define minimum standards for the survival, dignity and well-being of indigenous peoples, and that it complement and strengthen existing rights pertaining to indigenous peoples.

106. The representative of China said that the draft declaration should not be diluted if it was to give effective protection to indigenous people. A definition of the term "indigenous people" should be included in Part I of the draft declaration in order to identify the beneficiaries of the draft. "Indigenous people" could be defined as follows: "(i) the original peoples inhabiting certain countries or geographical regions and their descendants when these countries and regions have been colonized, conquered, occupied and ruled by colonial settlers from other countries, and these peoples retain some or all of their own social, economic, cultural and political institutions;

(ii) peoples inhabiting exclusively certain geographical regions with a unique style of living, and thus regarded as indigenous by other inhabitants and Governments of the countries in which they live, and they identify themselves as indigenous". Article 2 should be strengthened and the words "adverse discrimination" be replaced with stronger wording saying that indigenous people should be free from any practices aiming to discriminate against them and that all such practices must be eliminated.

107. The representative of Brazil expressed support for the intent of articles 1, 2, 42, 43, 44 and 45. Article 1 should be adopted as it stood, while article 2 could be improved by deleting the last part of the sentence after the words "dignity and rights" as it was redundant. With regard to article 42, the term "minimum standards" should be replaced with the term "indicative standards". The language in articles 43, 44 and 45 was endorsed.

108. The representative of France made references to his Government's positions expressed at the first session (1995) of the working group. He stated that collective rights did not exist in international human rights law, and therefore his Government had reservations with regard to those articles which aimed to establish collective rights. In their view, human rights were individual rights.

109. The representative of the Netherlands expressed concern about a possible imbalance between individual and collective rights as presently stated in articles 1 and 2. Many of the collective rights accorded by the draft declaration as currently drafted would not be applicable to individuals. The inclusion of a general safeguard clause for individual rights in the draft should be considered. Article 8 (2) in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which said that the exercise of the rights set forth in the Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms, was suggested as a model for such a cause.

110. The representative of Denmark expressed strong support for articles 1, 2, 42, 43, 44 and 45 as presently drafted, and reiterated support for the entire draft in its present form. His Government did not support the idea of including a definition of "indigenous peoples" in the draft declaration.

111. The representative of Australia said that there appeared to be no significant difficulties with articles 1 and 2. Article 1 was straightforward, while the provisions of article 2 were already included in Australian legislation. Collective rights, including the use of the term "indigenous peoples", did not create any problems for Australia. Articles 43 and 44 were also acceptable. Articles 42 and 45 should be elaborated further.

112. The representative of Japan expressed support for articles 1, 2, 42, 43, 44 and 45. However, he also expressed support for the view expressed by the Government of France that human rights were individual rights. The representative of Japan also expressed the view that a definition of "indigenous people" should be included in the draft declaration, and suggested that the definition proposed by the Special Rapporteur José Martínez Cobo or the relevant provisions in ILO Convention No. 169 could be used as a basis

for discussion in that regard. The definition should be flexible in accordance with the diverse situations of the world's indigenous people.

113. The observer for Sweden expressed general support for articles 1, 2, 42, 43, 44 and 45. However, the delegation also associated itself with the view that human rights were individual rights only.

114. The representative of the Russian Federation expressed support for articles 1, 2, 42, 43 and 44. However, the wording of the references in Article 1 to the Charter of the United Nations and other instruments should be brought into conformity with the wording in other human rights instruments. The representative expressed reservations with regard to the concept of "future rights" in article 44, and wondered whether article 45 should be included in its present form. The wording of article 9 (2) of the Declaration on the Right to Development could be included in the draft declaration.

115. The representative of Mexico expressed support for the contents of articles 1, 2, 42, 43, 44 and 45. With regard to article 42, the legal scope of the provision should be emphasized.

116. The representative of Peru expressed support for all six articles. However, article 43 should be moved to Part I of the draft declaration. Article 1 of ILO Convention No. 169 could be considered for inclusion in the draft.

117. The representative of Canada said it was important that the articles be coherent and consistent with existing human rights instruments. A provision on individual rights should therefore be included in article 1. Recognition of certain rights of indigenous people as collective rights merited further consideration and this should be done on an article-by-article basis. He also expressed support for the content of article 2. The terminology in the draft declaration dealing with individual and collective concepts should be closely reviewed. Article 42 should be considered in connection with article 37, keeping in mind the need for flexible and progressive implementation. Canada supported the proposal to move article 43 to Part I. Canada would interpret article 45 as referring to, inter alia, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

118. The observer for Norway expressed strong support for articles 1, 2, 42, 43, 44 and 45, and supported the suggestion that article 43 be moved to Part I.

119. The representative of Chile expressed support for article 1. However, Chile would like to see the text harmonized with relevant provisions in ILO Convention No. 169. Chile supported articles 2, 43 and 44 as presently drafted. Further discussion on article 42 should be postponed until there was greater clarity on the content of the draft declaration. It was necessary to spell out the scope of article 45, owing to its impact on the interpretation of the right to self-determination.

120. The observer for the Association nouvelle de la culture et des arts populaires expressed his full support for articles 1, 2, 42, 43, 44 and 45,

and emphasized that these provisions must be regarded as minimum standards. He pointed out that a definition of "indigenous peoples" could lead to the de facto exclusion of certain indigenous groups.

121. The observer for the International Organization for Indigenous Resource Development expressed the view that there should not be any problems with regard to collective indigenous rights, since individual and collective rights could exist side by side without any problems.

122. The observer for Inuit Circumpolar Conference (ICC) expressed full support for articles 1, 2, 42, 43, 44 and 45, and said that those articles could not be weakened. ICC also supported the entire draft declaration as it stood. The draft had to be regarded as a minimum standard for the rights of indigenous peoples.

123. The observer for the Aboriginal and Torres Strait Islander Commission, in a joint statement on behalf of indigenous organizations and indigenous representatives of Australia, expressed support for the articles under discussion, as well as for the entire draft declaration in its present form. The international community had not attempted to define the terms "peoples" and "minorities". Any attempt to exclude particular indigenous peoples from the protection of the draft declaration was opposed.

124. The observer for the Chittagong Hill Tracts Peace Campaign expressed his strong support for articles 1, 2, 42, 43, 44 and 45 in their present form. It was emphasized that the term "indigenous peoples" must be kept in the text of the draft declaration.

125. The observer for the Indigenous World Association stated his support for the entire draft declaration, including articles 1, 2, 42, 43, 44 and 45 which represented minimum standards for indigenous rights.

126. The observer for the Grand Council of the Crees identified the preamble of the draft declaration as an introduction to and interpretive element of the draft. He strongly supported articles 1, 2, 42, 43, 44 and 45. As to the question that all human rights were individual rights and that there was no need for collective rights, that was only one point of view and one which was not universally accepted. For instance, when racial discrimination was practised it was directed against groups, but individuals suffered because they were perceived to be members of the target group.

127. The observer for the Movimiento Indio "Tupaj Katari" supported articles 1, 2, 42, 43, 44 and 45. He expressed the view that nothing prevented indigenous peoples from having collective rights, and that these rights should be recognized in the draft declaration. Furthermore, there was no need for a definition of indigenous peoples. Some concrete suggestions aimed at improving the wording of the text were suggested, including to insert the word "born" between the words "are" and "free and equal" in article 2.

128. The observer for the International Organization of Indigenous Resource Development expressed support for articles 1, 2, 42, 43, 44 and 45 and read out the present text of those articles, which should remain unchanged.

129. The observer for the International Indian Treaty Council, the International Alliance of the Indigenous and Tribal Peoples of Tropical Forests, MAA Development Association, and Lumad Mindanaw Peoples Federation all called for the adoption of articles 1, 2, 42, 43, 44 and 45 in their present form, without any changes, amendments or deletions.

Articles 5, 9, 32

130. The observer for Fiji expressed strong support for the entire draft declaration as currently worded, including articles 5, 9 and 32. He expressed the view that a definition of indigenous peoples was neither necessary nor desirable. However, if the negotiations moved in the direction of favouring a definition, Fiji would argue strongly for a definition which was flexible and all-inclusive rather than one based on the historical and colonial experience of only some indigenous peoples.

131. The observer for Finland expressed support for articles 5, 9 and 32, and said that it was ready to adopt them as currently drafted. As to article 32, the observer referred to his delegation's statement at the first session (1995) of the working group, in which it stated that indigenous citizenship as proposed in article 32, in addition to the citizenship of the State of domicile, did not create any legal problems for Finland.

132. The representative of Brazil proposed that article 5 should read as follows: "Every indigenous individual has the right to the citizenship of the State to which he belongs." With regard to article 9, he proposed the following text: "Indigenous people have the right to belong to an indigenous community, in accordance with the traditions and customs of the community concerned. No disadvantage of any kind may arise from the exercise of such a right." He also expressed the view that the meaning of the term "nation", had to be clarified. Article 32 could be deleted without any problems, since the provisions were contained in other articles.

133. The representative of Australia said that there appeared to be no difficulty with article 5, which was a restatement of article 15 of the Universal Declaration of Human Rights and article 24 (3) of the International Covenant on Civil and Political Rights. Further discussion was needed on article 9 with respect to the inclusion and meaning of the word "nation". Australia would not be able to support the term "nation" if its meaning went beyond the concept of "first nations". Furthermore, there was a need to further clarify the meaning of the term "citizenship" in article 32, and how the term related to the use of the word "nationality" in article 5. The working group could explore the possibility of combining the second paragraph of article 32 with article 19.

134. The representative of Malaysia expressed support for article 5, while it said that articles 9 and 32 were not applicable for Malaysia. As to article 9, there was a need to further clarify the meaning of the word "nation".

135. The representative of Ukraine expressed general support for the draft declaration as the basis for elaborating a final version of the declaration. The first sentence of article 32 was not acceptable owing to its inconsistency with Ukrainian legislation.

136. The representative of Canada expressed support for the inclusion of article 5 in the draft declaration, and said that Canada understood this right to apply to nationality within an existing State. With regard to article 9, Canada recognized the importance of self-identification and community acceptance, but the notion of a "right to belong" needed some clarification as to how it would be consistent with existing human rights standards in international law. As to article 9, Canada suggested a more explicit reference to the right of each individual to a nationality. The declaration should be flexible enough to allow for varied and changing membership criteria. Also, the communities' right to determine membership, as with all other aspects of government, must be subject to an individual's rights to fairness. The Working Group should consider whether article 32 should be combined with articles 8 and 9, or whether the entire article was superfluous.

137. The representative of Ecuador stated that article 5 related to constitutional matters. In article 9 the term "indigenous nations" should be revised to avoid misunderstanding. As to article 32, Ecuador had problems with the term "indigenous citizenship" since in Ecuador they only had citizenship of the State.

138. The representative of the United States of America expressed support for article 5, and said that the right to a nationality was already enshrined in article 15 of the Universal Declaration on Human Rights and article 24 (3) of the International Covenant on Civil and Political Rights. However, the text of article 5 should be clarified to ensure that its scope concerned State nationality. With regard to article 9, the United States endorsed the concept that individuals had the right to self-identification and to exercise this right in community with others. The question of an individual's right to non-discrimination and due process in questions of membership was something the working group should look into. The United States agreed with the general thrust of article 32.

139. The observer for Norway expressed support for article 5, and said that such a provision was already included in the Universal Declaration on Human Rights, the Convention on the Rights of the Child and in the International Covenant on Civil and Political Rights. Norway also supported article 9. The provisions of article 32 should be clarified further, i.e. was it to be understood as giving an open-ended choice to determine nationality. However, the right to determine indigenous citizenship was said not to create any problems for Norway, as such a system had already been established in Norway via the Saami Electoral Register. It also should be considered whether article 32 could be merged with article 5.

140. The observer for Switzerland expressed support for articles 5, 9 and 32. As to article 9, the meaning of the term "nation" needed further clarification. The working group should consider merging article 32 with other relevant articles.

141. The observer for Sweden said that articles 5, 9 and 32 overlapped and that the provisions should therefore be clarified further. As to article 32, Sweden supported the view expressed by the representative of Australia that certain elements needed to be clarified, such as dual citizenship.

142. The representative of Japan expressed support for the Australian position on article 9, in particular regarding the concept of "nation". It also shared the concern expressed by the representative of Brazil on article 32.

143. The representative of the Russian Federation said that articles 5 and 9 were acceptable as currently drafted. The distinction between the term "citizenship" in article 32 and the term "nationality" in article 5 must be clarified.

144. The observer for Argentina expressed her support for the general thrust of article 5 whereby all indigenous people had the right to a nationality, a right already firmly established in international human rights instruments and in the Argentine Constitution which granted that right to all inhabitants. But as had been mentioned by various delegations, the declaration should state with precision that it referred to the nationality of the State or specify what other meaning it was implying. With regard to article 9, the term "nation" should be clarified further in order to avoid confusion with its internationally accepted meaning. On the other hand, the "right to association" was also established in the Constitution and should be exercised accordingly. As to article 32, the use of the term "citizenship" might cause confusion when referring to a person's membership in a community, because it had a precise juridical meaning which was not compatible with the one proposed in the text.

145. The observer for the International Organization of Indigenous Resource Development expressed support for articles 5, 9 and 32 by reading the present text of those articles and suggesting that they be kept unchanged.

146. The observer for the Aboriginal and Torres Strait Islander Commission expressed his strong support for articles 5, 9 and 32 as currently drafted.

147. The Aboriginal and Torres Strait Islander Social Justice Commissioner presented a joint statement on behalf of indigenous organizations and indigenous representatives of Australia, in which he expressed strong support for articles 5, 9 and 32.

148. The observer for the Saami Council expressed his strong support for articles 5, 9 and 32. He also referred to the statement by the observer for Sweden that Sweden associated itself with the view that human rights were individual rights only. The Swedish position with regard to collective rights was inconsistent with national Swedish legislation in which the Saami reindeer-herding rights were recognized as collective Saami rights.

149. The observer for the International Indian Treaty Council called for the adoption of the draft declaration as approved by the Working Group on Indigenous Populations and the Sub-Commission, in its entirety and without any changes, amendments or deletions, as minimum standards protecting

and promoting the rights of indigenous peoples. She stated that her organization would not accept any changes whatsoever in the text or wording of articles 5, 9 and 32, as they were integral parts of the entire document as it now stood.

150. The observer for the Ainu Association of Hokkaido said that the draft declaration should be adopted by the working group as it stood. He emphasized that the draft declaration should be adopted without any definition of "indigenous peoples".

151. The observer for the MAA Development Association stated that the organization supported the present wording of articles 5, 9 and 32. The right to nationality (art. 5) was already found in article 15 of the Universal Declaration on Human Rights, article 24 (3) of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child.

152. The observers for the World Indigenous Association, the International Alliance of the Indigenous and Tribal Peoples of Tropical Forests, the Association nouvelle de la culture et des arts populaires, the Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, and the Indian Confederation of Indigenous and Tribal Peoples all expressed their strong support for articles 5, 9 and 32 as currently drafted, and called for them to be adopted in their present form.

Articles 15, 16, 17 and 18

153. The observer for Estonia expressed support for articles 15, 16, 17 and 18. Her delegation did not have any problems with articles 16, 17 and 18. As to article 15, the representative underlined the importance of State-provided education, and stated that it was important that indigenous peoples had adequate opportunities to learn or have instruction in their mother tongue. The working group should consider a language which was closer to that of the provision in article 4 (3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

154. The observer for New Zealand expressed support for the thrust of article 15. However, the working group might need to consider if account needed to be taken of the fiscal constraints operating upon States. Article 16 did not create any major problems. With regard to article 17, New Zealand expressed its support for the underlying intent of this article in so far as it confirmed that indigenous people had the same right as any person or group to establish their own media in their own language.

155. The representative of Brazil stated that article 15, which dealt with the important issue of the right to education, was generally consistent with Brazilian legislation. The establishment and control of educational systems and institutions by indigenous people could create some administrative difficulties. As an example, the representative mentioned that in Brazil there were around 170 different indigenous languages, and that most of them were spoken by fewer than 100 individuals. Article 15 should take into account this kind of problem. He emphasized that the main objectives of the article were to secure the right to all levels and forms of education

including bilingual education. As to articles 16 and 18, Brazil supported their adoption as currently drafted. Brazil also generally supported article 17. However, it was proposed that the words "in accordance with national legislation and regulations" be included at the end of the first sentence of article 17.

156. The representative of Canada expressed support for article 15, and expressed the view that indigenous people should gain greater control over education. Education was important not only for children but also for youths and adults, and the scope of the first paragraph of article 15 should be expanded by referring to indigenous individuals. It might also be preferable if the article referred to "a right to access to education at all forms and levels". Furthermore, a new second paragraph of article 15 could affirm the right to establish and control educational systems and institutions providing education in indigenous languages in a manner appropriate to indigenous culture and which respected minimum educational standards. Indigenous children living outside their communities should have adequate opportunities to education in their own culture and language, where demand and resources allowed. Canada supported the provisions in article 16. However, further consideration is required. Canada also supported the provisions contained in article 17, but suggested that the second paragraph be moved to article 16. Canada also supported the content of article 18; however, the provision should be moved to Part V of the draft declaration. Article 18, which dealt with labour rights, should also refer to the rights of indigenous individuals rather than indigenous peoples. Moreover, Canada suggested the inclusion of a special reference to indigenous children in article 18, stating that indigenous children will be protected from economic exploitation or work which was harmful to the child's health, education or development. Reference to discriminatory conditions in article 18 should not affect a State's ability to implement affirmative action or equal opportunity programmes.

157. The representative of Chile expressed support for the principles enshrined in article 15. However, there was a contradiction in article 15 between the first paragraph, which said that indigenous people had the right to control their educational system, and the third paragraph, which obliged States to provide appropriate resources for these purposes. The language of article 17 should be revised. Chile supported the general thrust of article 18; however, the language should be revised in order to bring it into line with article 20 of ILO Convention No. 169.

158. The observer for Sweden expressed general support for articles 15, 16, 17 and 18, and emphasized the importance of Part IV of the draft declaration. The concept of the right to education, as stated in article 15, was of great importance. The representative referred to the goal of the International Decade of the World's Indigenous People, in which education is mentioned as one of the major aspects. Sweden expressed its support for the general thrust of the provisions of articles 16, 17, and 18.

159. The representative of France expressed concern with regard to article 15, and said that the establishment of a parallel educational system puts into question the existing legislative provisions which stated that State-provided education shall be given in French. As to article 17,

France expressed its support for the principle of the freedom of expression. However, this right should be guaranteed for all individuals, including indigenous individuals, rather than indigenous peoples as such.

160. The representative of Peru expressed general support for article 15; however, certain aspects needed to be further clarified and brought into line with Part VI of ILO Convention No. 169. Peru did not have any problems with articles 16 and 17 as currently drafted. The general thrust of article 18 did not create any problems. However, article 18 could be strengthened by bringing it into line with article 20 of ILO Convention No. 169.

161. The representative of Japan indicated that his Government would have problems with the wording "States shall take effective measures" in articles 15, 16 and 17, and that the working group should therefore consider more appropriate wording for a declaration of a non-binding nature. As to article 15, the representative expressed support for the view expressed by the representative of France. With regard to articles 16 and 18, Japan required further clarification, in particular of the concept of international labour law in article 18.

162. The representative of Ecuador noted the provisions in the Constitution and that indigenous languages were used as the principal language of education in indigenous areas. The wording of article 18 should reflect the fact that international labour law was evolving and was not a set of static norms.

163. The observer for Finland expressed strong support for Part IV of the draft declaration, and emphasized the importance of having articles 15, 16, 17 and 18 in the draft.

164. The representative of Australia emphasized the importance to indigenous peoples of the right to education and of the right of indigenous communities to establish their own education systems, schools and media. In relation to articles 15 and 16, Australia had already progressed a long way towards providing opportunities for education in indigenous languages and the use of traditional teaching methods. Article 17 was largely consistent with current Australian policy and practice. However, the term "access" should be clarified further. The representative asked why the first paragraph was not confined to State-owned media as was the case for the second paragraph. Article 18 should be more clearly worded so as to ensure that indigenous peoples benefit from those international labour law instruments ratified by States.

165. The representative of Colombia expressed support for the general thrust of articles 15, 16, 17 and 18. The representative proposed that article 15 should begin in the following manner: "All indigenous peoples have the right to all levels and forms of State-provided education and the right to establish and control their educational systems and institutions providing education in their own languages and in accordance with their own teaching and learning methods. Indigenous children also have this right. Indigenous children living outside their communities shall have access to education in their own languages and cultures. States shall adopt effective measures to secure sufficient resources aimed at such purposes, and shall have the responsibility to guarantee the education and exercise of cultural diversity with regard to

education." The following sentence should be included at the end of article 18: "States shall adopt adequate measures to respect cultural and ethnic diversity and shall take this into account in matters relating to labour conditions and standards."

166. The representative of the United States of America expressed general support for the basic premises of articles 15, 16, 17 and 18, and said that those articles were of key importance. As to article 15, non-discriminatory access to public education was a right that should be enjoyed by indigenous persons in common with other members of the community. Furthermore, indigenous persons should have the right to create and administer their own educational institutions, if they chose to do so. The United States supported the general premise of article 16; however, article 16, as currently drafted, infringed on freedom of speech. The United States supported the basic premise of article 17; however, special group access rights would conflict with most States' international agreements (governing radio frequencies) and domestic statutes (placing media ownership in private hands). Finally, the United States supported the basic goals of article 18. Indigenous persons should have the right to enjoy fully all rights established under domestic labour law and international treaties to which the State was a party, without discrimination on account of their indigenous origin or identity. It might be useful to include the "non-discrimination concept" in the first paragraph of article 18.

167. The observer for Bolivia expressed support for articles 15, 16, 17 and 18. The observer referred to principles and provisions in existing international instruments and in the Bolivian Constitution and legislation which already applied for indigenous peoples of Bolivia. As to article 15, Bolivia did not agree with the view expressed by the representative of France and it was necessary to involve indigenous peoples in the administration of the education system in order to fully guarantee the democratic nature of the education system. The text of article 16 should include the concept of respect for indigenous culture.

168. The representative of Malaysia expressed strong support for article 15, and said that the Malaysian Constitution stated that there shall be no discrimination on grounds of religion, race, descent or place of birth in the administration of any educational institutions. As to articles 16 and 18, Malaysia supported the general thrust of the provisions. With regard to article 17, the representative expressed general support; however, the scope of the obligation "to take effective measures" should be clarified further.

169. The observer for Argentina expressed general support for articles 15 and 18; however, the provisions should be more explicit. The Argentine Constitution guaranteed the right of indigenous populations to bilingual and intercultural education. The right did not discharge the State of its responsibility for education planning, monitoring and general control of the education system. The provisions of bilingual and intercultural education were of great importance. Article 18 should be further emphasized by adding the non-discrimination concept.

170. The observer for the International Organization of Indigenous Resource Development expressed his support for articles 15, 16, 17 and 18 by reading the present text of those articles and suggesting that it should be kept unchanged.

171. The observers for the MAA Development Association, the Union of Bolivian Indigenous Women, the Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, the World Council of Indigenous Peoples, the International Indian Treaty Council, the Indigenous World Association, the Society for Threatened Peoples, the Consejo de Todas las Tierras, the Indian Confederation of Indigenous and Tribal Peoples, the Association nouvelle de la culture et des arts populaires and the Chickasaw Nation all expressed their strong support for articles 15, 16, 17 and 18 as currently drafted, and called for the adoption of the draft declaration without any changes, amendments or deletions.

172. The observer for the Aboriginal and Torres Strait Islander Commission presented a joint statement on behalf of indigenous organizations and indigenous representatives of Australia in which he expressed strong support for articles 15, 16, 17 and 18 and called for the adoption of those articles as currently drafted. As to article 15 of the draft declaration, the observer referred to other international instruments where the right to education was protected: in article 26 of the Universal Declaration on Human Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights, article 28 (1) of the Convention on the Rights of the Child, and article 26 of ILO Convention No. 169. He also referred to the following instruments with regard to the right to establish educational institutions: article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, article 29 (2) of the Convention on the Rights of the Child, and article 27 (3) of ILO Convention No. 169. The provisions contained in article 16 had already been confirmed in existing international human rights instruments: in article 13 (1) of the International Covenant on Economic, Social and Cultural Rights, article 29 (1) (d) of the Convention on the Rights of the Child, article 4 (4) of the Declaration on Minorities, and article 31 of ILO Convention No. 169.

Articles 6, 7, 10 and 11

173. The observer for Sweden emphasized the importance of Part II of the draft declaration, and said that standards and principles in the draft should be in line with existing international instruments. Article 6 should be made as strong as possible, and it was necessary to look into other instruments in order to bring this article into line with them. Article 7 required further clarification regarding the concept of collective rights and how the collective rights contained in this provision should be secured. The wording "lands or territories" in article 10 needed to be clarified. Moreover, certain provisions in article 11 also needed to be clarified and article 11 should also include provisions pertaining to the protection of indigenous peoples during internal conflicts.

174. The representative of Colombia expressed support for the thrust of article 11. The representative proposed that the following should be included in article 11: "States shall adopt effective measures to guarantee the

exercise of the collective rights of indigenous peoples to their territories and to autonomy during internal armed conflicts and to guarantee the neutrality of indigenous peoples in such conflicts when they rise and not to compromise their territories as the sites for the escalation of such conflicts."

175. The representative of Malaysia expressed support for articles 6 and 7. As to article 10, the representative expressed the view that an absolute prohibition on relocation from lands and territories would not be acceptable for his delegation, and that the provision therefore should be elaborated further. It was said that the wording "forcibly removed" should, therefore, be narrowly defined. With regard to article 11, in periods of armed conflict indigenous people should be treated like any other citizens.

176. The representative of Mexico expressed support for the general thrust of article 6. However, it was necessary to include provisions which allowed the authorities to remove indigenous children if, for example, they were being abused sexually. Under such circumstances the State was obliged to separate the children from their families to guarantee their well-being, whether they were indigenous or not. The words "any pretext" in the first paragraph of article 6 should be replaced with the words "without any justified cause".

177. The observer for Norway said that article 6 was not in conflict with existing international instruments; however, the article nevertheless might need to be revised. Articles 7 (b) and 10 should be moved to Part VI of the draft declaration. Certain ambiguities with regard to provisions dealing with land rights should be clarified. Articles 25, 26, and 27 referred to "lands and territories which they have traditionally owned or otherwise occupied or used" while article 10 spoke of "their lands and territories". He noted that article 16 of ILO Convention No. 169 spoke of "the lands which they occupy". Certain provisions in article 11 needed to be clarified.

178. The representative of the Russian Federation expressed support for articles 6, 7 and 10, although some editorial amendments were necessary. As to article 11, the representative said that his delegation would prefer to have more general provisions aiming to protect civilians rather than categorical demands.

179. The representative of France said that some of the articles would cause constitutional problems for France. In that regard, the representative mentioned that article 12 of the French Constitution guaranteed the right of equality before the law regardless of race or ethnicity. As to articles 7 and 10, France had problems with the use of the term "lands and territories". With regard to article 11, France could not accept that certain groups should have special protection and security.

180. The representative of Brazil said that his Government was ready to accept the general thrust of articles 10 and 11 (c); however, those provisions should recognize that displacements of communities might be necessary for their own safety in cases of war or catastrophe. Just and fair compensation had to be assured to displaced indigenous peoples.

181. The observer for Fiji expressed support for the concept of collective rights, which was used throughout the draft declaration including in articles 6, 7 and 8. The principle of collective rights was an integral component of indigenous societies and communities, and international human rights instruments recognized collective rights. In that regard, he referred to articles 5 and 14 of ILO Convention No. 169, article 2 (2) of the Declaration on the Right to Development, articles 19 to 24 of the African Charter on Human and Peoples' Rights, and article 6 (1) of the 1978 UNESCO Declaration on Race and Racial Prejudice.

182. The observer for Finland expressed support for articles 6, 7, 10 and 11. His delegation supported the views expressed by the observer for Norway and Sweden that the provisions should be made as strong and clear as possible and that the language should be brought into line with existing human rights instruments. As to article 11 (a), questions relating to the recruitment of indigenous individuals into the armed forces should be elaborated further.

183. The representative of Canada said that the issue of genocide and the removal of children referred to in article 6 should be considered in conjunction with article 7, and that the focus of article 6 should be on the guarantee of the right of indigenous individuals to life, liberty and security of the person. Article 7 would be strengthened if it contained a general reference to the Convention for the Prevention and Punishment of the Crime of Genocide. The representative indicated that the term "ethnocide" raised some concerns for Canada. The reference "lands and territories" in article 7 should be included in Part VI. With regard to article 10, there was some confusion regarding the use of the terms "removed" and "relocation". The representative expressed the view that "removed" would suggest a temporary move while "relocation" would suggest a more permanent move. The working group should consider moving article 10 to Part VI of the draft declaration. As to article 11, Canada expressed reservations with regard to the concept of the "right to special protection", and asked if indigenous people should have protection beyond that provided for under international humanitarian law. Article 11 could be an affirmation of the principle that in times of armed conflict, indigenous people had a right to all protections offered by international humanitarian law, in particular those included in the Fourth Geneva Convention. However, there might be circumstances in which special measures were required to ensure that indigenous people benefited from the protection offered by international humanitarian law, and the working group should consider including such a principle in the draft declaration. Canada supported the inclusion of the principle of prohibiting the use of indigenous people against each other in furtherance of domestic policies hostile to indigenous people. Subparagraph (c), which referred to "lands and territories", could be moved to article 10 or Part VI. Finally, the representative expressed the view that the issue of non-discrimination, contained in subparagraph (d), was adequately covered in article 2.

184. The representative of Japan said that certain elements in articles 6, 7, 10 and 11 had to be discussed further. As to articles 6 and 7, he reiterated the view that collective rights did not exist in international human rights law. Furthermore, his delegation had problems with the words

"under any pretext" in article 6; the language should be brought into line with the language used in the Convention on the Rights of the Child. Articles 7 (b) and (c) and 10 should be discussed further.

185. The representative of Australia expressed general support for articles 6 and 7. As to article 7, the working group should seek further clarification of the meaning and scope of the term "redress". Furthermore, with regard to articles 7 (b) and 10, Australia supported the right of indigenous peoples not to be forcibly removed from their lands. In relation to compulsory acquisition of land, the Native Title Act ensured that just terms of compensation would be provided. As to article 11, the working group should further consider the term "special protection" for indigenous peoples. In the case of armed conflict involving Australia, it would be difficult to foresee a situation which would warrant indigenous people being given preferential treatment over and above that given to non-indigenous people, although this position was influenced by clarification of the meaning of "protection" in that context. Moreover, if the wording "special protection" referred to the fact that in times of armed conflict the possibility of genocide or ethnocide for indigenous communities was more serious than for non-indigenous communities, then consideration should be given in the discussion as to how special care could be taken to ensure protection for indigenous peoples and their cultural identities in that context. With regard to subparagraph (b) of article 11, the working group should take into consideration discussions on that issue in the working group on the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts.

186. The representative of Chile expressed support for article 6, and said that the draft declaration should clearly spell out the term "distinct people" and bring it into line with article 1 of ILO Convention No. 169. Chile expressed its support for the general thrust of article 7 (a), (b), (c), and (d). However, the representative expressed reservations with regard to the term "cultural genocide", owing to the very specific meaning of the term "genocide" under international law. With regard to article 10, any transfer or removal of indigenous people should take place only with their free and informed consent. The representative expressed reservations with regard to the term "territories". He also expressed reservations with regard to article 11, which was worded in a discriminatory way. However, Chile did not have any problems with article 11 (a) and (b).

187. The representative of Ukraine said that his Government did not have difficulties with articles 6, 7 and 10, and that with slight amendments they would be acceptable. However, the delegation was concerned by the general tone of isolationism and a certain aggressiveness of the draft declaration as a whole; a lack of a spirit of cooperation and dialogue between indigenous peoples, Governments and the international community. The delegation was of the opinion that claims for preferential treatment for indigenous peoples would not contribute to inter-ethnic peace and understanding in any society. Article 11 was, moreover, in contradiction with the Geneva Conventions of 1949 and with Ukraine's national legislation.

188. The representative of the United States of America referred to the detailed comments of his delegation on articles 6, 7, 10 and 11 at the

first session (1995) of the working group, and reiterated its support for the basic thrust of those articles. He stated that article 6 raised a collective rights issue; it might be rephrased to provide for the protection of individual rights to security and integrity exercised in community with others. The representative also expressed concern that the terms "ethnocide" and "cultural genocide" in article 7 were not clear concepts that could be usefully applied in practice. He suggested that the provision could be rephrased to state that indigenous people had a right to be free not only from genocide but from actions aimed at destroying their rights to belong to the group and enjoy their own culture, language and religion. With regard to article 11, indigenous people should have the same right as non-indigenous people to protection during time of conflict. He also noted that the declaration should not derogate from the Geneva Conventions.

189. The observer for Argentina supported the articles under consideration but said that the term "territories" had a precise meaning in international law and was considered as an element of the State. For that reason article 75, paragraph 17, of the Argentine Constitution mentioned the word "lands" and therefore the wording of the draft declaration should be discussed further. His observations also applied to other articles where the term appeared (arts. 25, 26, 11 and 7). On article 11, there was no obligatory military service in Argentina but in a case of armed conflict or national emergency, it would not be fair or just to establish distinctions. The constitutional duty contained in article 21 of the Constitution stated that all citizens should defend the country and the Constitution.

190. The representative of Ecuador recognized the importance of the principles stated in articles 6, 7, 10 and 11. As to article 6, he suggested that the term "prosperity" should be included after the phrase "to live in freedom, peace and security". Moreover, the terms "distinct peoples" in article 6 and "territories" in articles 7, 10 and 11 should be clarified. Article 11 should be brought into line with the Geneva Conventions.

191. The observer for the International Organization of Indigenous Resource Development expressed his support for articles 6, 7, 10 and 11 by reading the present text of those articles and suggesting that the present text should be kept unchanged.

192. The observer for the Grand Council of the Crees expressed his strong support for article 10. Indigenous peoples and communities had time and time again been expelled from their lands or had had communities relocated without their consent; protection was required under international law.

193. The observers for the Chickasaw Nation, the National Aboriginal and Torres Strait Islander Legal Service Secretariat, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Central Land Council, the New South Wales Aboriginal Land Council, the Asociación Napguana, the Chittagong Hill Tracts Peace Campaign, the World Council of Indigenous Peoples, the International Indian Treaty Council, the Association nouvelle de la culture et des arts populaires, the Finno-Ugric Consultation Committee, the Cordillera Peoples Alliance, the Indian Confederation of Indigenous and Tribal Peoples, the World Council of Churches and the Lummi Indian Business Council all expressed their strong support for articles 6, 7, 10 and 11 as currently

drafted, and called for their adoption without any changes, amendments or deletions. It was also emphasized that they considered articles 6, 7, 10 and 11 as minimum standards.

194. The observer for the Indian Law Resource Center expressed her strong support for articles 6, 7, 10 and 11. She said that the different articles represented distinct concepts. The representative referred to the concept of "integrity" in articles 6 and 7, and identified it as a fundamental principle in that context. The integrity of indigenous peoples and nations had been threatened throughout history. The representative said that the grouping of articles could be harmful, owing to the possible deletion or diminution of concepts or elements of concepts in the articles. Moreover, articles should not be grouped in the future.

Articles 19, 20, 22 and 23

195. The observer for the International Organization of Indigenous Resource Development proposed language for articles 19, 20, 22 and 23 by reading out the text of the articles as adopted by the Sub-Commission. The observer for the Indigenous World Association called for the adoption of the articles in their present form considering that they were valid rights of indigenous peoples.

196. The representative of Mexico stated that the articles under consideration dealt with some basic aspects of the working group's work, namely the participation of indigenous people in decision-making processes that affected them. Her Government supported the basic principles in the articles, which were in line with efforts undertaken at the national level. With regard to the second paragraph of article 22, the use of language was important. She suggested replacing the word "impedidos" in the Spanish version with "descapacitados".

197. The representative of Denmark and the Home Rule Government of Greenland expressed full support for the articles under consideration as they stood because they represented the basic elements for the enjoyment of political, civil, social, cultural and economic rights by indigenous peoples. He stated, furthermore, that democracy, development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing.

198. The observer for the World Council of Indigenous Peoples said that the element of free and informed consent as laid down in the second paragraph of article 20 was an integral part of the right to self-determination and crucial for the relationship between indigenous peoples and Governments on a basis of equality. This was not a new concept, it went beyond the individual and was intrinsic to democracy.

199. The representative of Canada stated that she understood that articles 19 and 20 were intended to state the right of indigenous individuals to participate in the general political processes of the States in which they lived without discrimination and were consistent with other international instruments including the International Covenant on Civil and Political Rights. However, reading article 19 to mean that indigenous individuals had special rights in relation to matters that affected them in the same way that

they affected non-indigenous individuals would not reflect the purpose of the article. Articles 19 and 20 could be combined into one article reflecting the principle of the right to participate fully in public affairs, including participation in State decisions which directly affected certain areas of particular concern to indigenous people. She referred to article 25 of the International Covenant on Civil and Political Rights and article 2 of the Declaration on Minorities as sources of inspiration. She also stated that concerning the right to an adequate standard of living as laid down in article 22, the principle contained in article 11 (1) of the International Covenant on Economic, Social and Cultural Rights could be used as guidance. She stated furthermore that in many countries, it was the sole responsibility of the State to ensure that the rights of children were respected and suggested the insertion of an acknowledgment that indigenous communities could also play a role in ensuring that the rights of indigenous children were respected. With regard to article 23, she suggested that attention be given to article 1 of the Declaration on the Right to Development which described the content of the right to development and acknowledged that it could be exercised both individually and collectively. However, she noted that article 2 of the Declaration stated that the human person was central to the right to development and should be the active participant and beneficiary of the right.

200. The observer for the Comisión Internacional de Derechos de Pueblos Indigenas de Sudamérica expressed his support for the draft as adopted by the Sub-Commission and said that articles 19 and 20 were very important as a tool to avoid escalation of situations where indigenous peoples were subjected to decisions in which they had not participated.

201. The observer for the Lummi Indian Business Council called upon the working group not to change the articles under consideration in light of his concerns over the political and social situation of indigenous peoples. Indigenous peoples had the right to participate as collectivities and their participation in existing procedures was hampered by the overall economic situation.

202. The observer for Sweden stated that two elements should be reflected in articles 19 and 20. The first was that indigenous people had the same rights as others without discrimination, as reflected in the International Covenant on Civil and Political Rights. The second was that indigenous people should participate in decision-making processes whose outcome affected them. The proposal to combine articles 19 and 20 into one article was interesting. She suggested the insertion of the phrase "where necessary" after the phrase "special measures" in the first paragraph of article 22. The second paragraph of article 22 should be directed more towards vulnerable individuals; the listing was not exhaustive. She stated that her Government had no major problems with article 23 but suggested the deletion of the word "all" in the third sentence.

203. The observer for the Aboriginal and Torres Strait Islander Commission indicated that there was a clear link between article 19 and article 4. Article 19 addressed two related but distinct rights, namely the right to participate in decision-making and the right of indigenous peoples to develop their own decision-making institutions. The former was affirmed in

the International Covenant on Civil and Political Rights, articles 2 (2) and 3 (3) of the Declaration on Minorities and article 6 (1) (b) of ILO Convention No. 169, while the latter was recognized in article 6 (1) (c). Article 20 addressed the specific aspect of decision-making in the context of devising legislative or administrative measures; a similar right was contained in article 6 (1) (a) of ILO Convention No. 169. He opposed the deletion of the phrase "free and informed consent" because the historical and contemporary marginalization and the often small numbers in society of indigenous peoples meant that the normal operation of a democratic system of government did not necessarily allow for adequate expression of indigenous perspectives. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and certain provisions of ILO Convention No. 169 were an affirmation of article 22. He also referred to article 1 of the Declaration on the Right to Development, article 7 (1) of ILO Convention No. 169 and article 22 (1) of the African Charter on Human and Peoples' Rights as being related to article 23.

204. The representative of Japan stated that he shared the concerns expressed by the representative of Canada on articles 19 and 20. Article 22 was unclear in comparison with article 1 of the International Covenant on Economic, Social and Cultural Rights and wondered what was meant by the phrase "special measures". The wording of article 23 was very broad considering that economic and social rights were generally realized by national policies and actions.

205. The observer for Argentina noted that articles 19 and 20 mentioned the participation of indigenous populations in the process of adopting decisions, which the Constitution of Argentina expressly recognized. That right should be worded in a more precise manner so as to permit the necessary coordination with the laws of a democratic State.

206. The observer for the New South Wales Aboriginal Land Council stated that articles 19 and 20 contained manifestations of the right of self-determination. Participation on the basis of consent, recognition of indigenous institutions, and the right to develop their own institutions were part of this. The observer for the International Organization of Indigenous Resource Development called for the adoption of the articles as they stood and said that they reflected the right of self-determination.

207. The observer for Fiji stated that both her Government and the participants at the Suva Workshop supported the articles as adopted by the Sub-Commission. The draft was a declaratory instrument whose implementation was up to Governments but she hoped that they would provide the resources and provisions necessary to promote positive discrimination. The draft did not create special rights for indigenous peoples but merely provisions that ensured that indigenous peoples had equal rights. The observer for Bolivia stated that his Government supported adoption of the articles as they stood as soon as possible.

208. The representative of Malaysia fully supported the special measures enumerated in article 22. He also supported article 23 but with the qualification that it be implemented through the institutions and agencies established for that purpose. With regard to article 19, his delegation found the scope of the phrase "to maintain and develop indigenous decision-making

institutions" unclear and sought clarification on that point. His Government could support article 20 subject to modification as in practical terms the right to participation in devising legal and administrative measures could not extend to participation in the legislative and executive bodies without observance of the necessary procedures. He supported the inclusion of the phrase "free and informed consent" but noted that this required the establishment of an appropriate mechanism for consultation.

209. The representative of France expressed his concern about articles 19, 20 and 23 which, in his opinion, created special rights and raised questions of sovereignty, and about article 19 which gave indigenous peoples a right of veto. He also shared the concerns expressed by the representatives of Canada and Japan.

210. The representative of Chile stated that his Government could support article 22. He also stated that articles 19, 20 and 23 shared certain conceptual points which were at present somewhat ambiguous. In order to enhance the exactness of the wording, safeguard the objectives of the articles and avoid the existence of diverging interpretations of the articles, their language had to be adjusted.

211. The representative of China expressed his support for the articles under consideration and stated that article 19 could be strengthened by inserting a phrase to the effect that States should take relevant measures to ensure that indigenous peoples participated.

212. The observer for the Central Land Council said that government delegations seemed to feel that recognition of collective rights was something new and dangerous. She said that collective rights were already recognized in international law and referred in that respect to the right of self-determination, rights relating to international peace and security, the right of permanent sovereignty over natural resources, the right to development, rights relating to the environment, the rights of minorities, and rights relating to the existence of groups such as those protected by the Convention on Genocide. The draft declaration had been elaborated because existing human rights law did not protect indigenous peoples and therefore the argument put forward by Governments that guarantees in international law already existed were meaningless. She considered the provisions of article 19 essential but said that States should make indigenous participation effective through administrative measures. The second paragraph of article 20 was essential to stop continuing colonial domination. Special measures as laid down in article 22 were necessary to put right past and present wrongs. Article 23 would be good protection against changes of governments and ideologies. She concluded by stating that these were minimum standards.

213. The observer for the Association nouvelle de la culture et des arts populaires referred to the name of the working group as an indication of the non-recognition of the rights of indigenous peoples. He also stated that international law prevailed over national law and that therefore he did not understand why Governments invoked the argument that their national laws were not in conformity with the provisions of the draft. He said that the provisions were minimum standards and called for their adoption.

214. The representative of Brazil stated that his Government had no difficulty with article 19 in its present form. He agreed with the principle goal of article 20 but believed that the language could be improved. He suggested the following language: "Indigenous people have the right to participate fully, if they so choose, in the discussion of legislative and administrative measures that may affect them. States shall consult the peoples concerned, whose informed opinion shall be expressed freely, before adopting and implementing such measures."

215. The Brazilian delegation also supported the spirit of article 22 and suggested the insertion of the words "inter alia" before the phrase "in the areas", since the list of areas should not be limited. The Government also considered it important to include a reference to the educational area in this list, consistent with articles 15 and 16 of the draft. The delegation recognized the right contained in article 23 and suggested, with a view to providing the article with legally appropriate language, to replace the phrase "the right to determine" with the phrase "the right to active and informed participation" in the second sentence.

216. The representative of Colombia said that indigenous peoples should, on the basis of their collective features, participate as collectivities and that that feature warranted the development of special and distinct ways of participation. She therefore supported the general thrust of articles 19, 20, 22, 23 and 24. With regard to article 22, she agreed with the representative of Mexico to replace "impedidos" with "descapacitados" in the Spanish version. She suggested the addition of the phrase "and according to their own cultural systems" at the end of article 23. She also suggested adding the phrase "States shall endeavour to ensure cultural diversification ..." at the end of article 24.

217. The representative of Australia stated that the articles under consideration were closely related to the broader issue of self-determination.

218. The representative of Ecuador stated that the articles under consideration reflected themes recognized in the International Covenant on Economic, Social and Cultural Rights. In article 20, the representative suggested adding the phrase "and proposing" after the words "in devising". The representative stated that article 22 was applicable to all citizens of a State. He supported the replacement of the phrase "impedidos" with the phrase "descapacitados". With regard to article 23, programmes developed with regard to the right of development had to be carried out through the competent national authorities.

219. The observer for Norway supported the general thrust of the articles under consideration although he suggested the deletion of the phrase "if they so choose" in article 19 since article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights did not confer an unconditional right of participation. With regard to article 19, he requested clarification of the phrase "in accordance with their own procedures". He supported the reference to special measures in article 22 but these had to be limited to specific areas. His Government supported article 23 since it was similar to article 7 (1) of ILO Convention No. 169.

220. The observer for the Chittagong Hill Tracts Peace Campaign stated that the denial of the rights under consideration would have serious practical effects for indigenous peoples and therefore called for their adoption as drafted. He said that consultation was not the same as consent.

221. The representative of the United States of America supported the goal of article 19 to the extent it attempted to ensure that indigenous people participated effectively in decision-making at the national and local levels, particularly with respect to decisions directly affecting them. There was a need for a strong recognition of the importance of democratic processes in the declaration. He called for the revision of article 20 to bring it into line with international law but supported the basic principle. Furthermore, special measures (art. 22) might be appropriate when indigenous people were in a disadvantaged position in comparison with the rest of society, but entitlement to such special measures was not a right under international law. He endorsed article 23 in so far as it was in line with the Vienna Declaration and Programme of Action, but did not feel that it was appropriate to recognize collective development as a right. The United States did not accept in an international context the right to development of States or groups.

Articles 4, 8, 21 and 33

222. The observer for the International Organization of Indigenous Resource Development proposed language for articles 4, 8, 21 and 33 by reading out the text of the articles as adopted by the Sub-Commission. The observer for the Indigenous World Association called for the adoption of the articles in their present form considering that they were valid rights of indigenous peoples.

223. The observer for the International Indian Treaty Council stated that the draft should be adopted as it stood considering that it reflected the minimum standards of protection of the rights of indigenous peoples and as an integral part of the declaration the articles under consideration should not be changed.

224. The observer for the Indigenous Woman Aboriginal Corporation, in a joint statement with two other Aboriginal organizations, stated that the element of self-identification as contained in article 8 was widely recognized as being fundamental to the exercise of the right of self-determination and could therefore not support any revision of the existing text. Articles 19 and 20 were relevant with regard to article 4 which must be viewed in light of the universally accepted notion that human rights were universal, indivisible and equal. There was an obvious demonstrable link between respect for indigenous characteristics and respect for indigenous institutions and a clear link between article 21 and article 8. The provision "in accordance with internationally recognized human rights standards" in article 33 could be interpreted to mean that indigenous peoples did not possess rights to develop their own institutions unless they were in accordance with international human rights law. As a matter of principle, this was discriminatory in so far as other peoples were not subjected to the same restriction. She reiterated that she considered indigenous peoples bound by international human rights law.

225. The representative of France stated that the articles under consideration were redundant, vague, and mixed civil with collective rights. His delegation wished to see the reference to human rights in article 33 retained.

226. The observer for the Central Land Council stated that the element of self-identification in article 8 was essential and recalled the conclusion of the Chairperson-Rapporteur of the Working Group on Indigenous Populations in her note on the concept of indigenous peoples that a definition of indigenous peoples was neither possible nor desirable. She urged strongly the retention of the reference to indigenous legal systems in article 4 and to the word "customary" in article 33. She also said that article 21 should not be rejected simply out of fear of the possibility of claims for compensation.

227. The observer for Norway stated that his Government strongly supported the ideas behind the articles under consideration. Effective indigenous participation in decision-making at all levels was crucial. The idea of participation was contained in article 21 of the Universal Declaration of Human Rights, article 25 of the International Covenant on Civil and Political Rights and article 6 of ILO Convention No. 169. In some areas, however, some clarifications were needed, for example the phrase "in accordance with their own procedures" in article 19 and the phrase "free and informed consent" in article 20, which had been identified by some speakers as giving indigenous peoples a right of veto. His delegation supported the concept of special measures in article 22 but felt that these should be reserved for overcoming effects of situations of disadvantage as was the case in article 1 (4) of the International Convention on the Elimination of All Forms of Racial Discrimination. He also stated that he could support the concept reflected in article 23 which to a large extent was also reflected in article 7 (1) of ILO Convention No. 169. Norway supported the idea that distinct groups had the right to maintain their characteristics since this was already present in article 27 of the International Covenant on Civil and Political Rights, article 30 of the Convention on the Rights of the Child and in the Declaration on Minorities. Finally, he referred to the Technical Review which had suggested that there was overlap between articles 4 and articles 8, 21 and 33.

228. The observer for Sweden also referred to the Technical Review and the possible overlap between the articles under review. The element of self-identification as reflected in article 4 was important and there was a link between article 4 and articles 19 and 20. Articles 21 and 23 overlapped with other articles of the draft. The reference to human rights in article 33 was very important.

229. The representative of China supported the articles under consideration. In article 4 emphasis should be put on the phrase "of the State". He referred in this respect to articles 19 and 20. With regard to the element of self-identification contained in article 8, indigenous peoples were indigenous peoples whether they identified themselves as such or were identified and/or recognized by others. The elaboration of a declaration that did not contain a definition was like building a house without knowing who was going to live in it. He stated clarifications were needed for the second part of article 8 concerning the issue of identifying and recognizing indigenous peoples.

230. The representative of Malaysia stated that his Government could support the inclusion of articles 8 and 33. With regard to article 4, his Government recognized the existence of distinct legal systems amongst the indigenous communities and did not view the right to maintain and strengthen this institution as intending to provide for the establishment of a separate legal system parallel to the existing Malaysian legal system. As for article 21, his delegation was still unclear as to the phrase "their own means of subsistence and development" and were of the view that this should be narrowly defined. Therefore, his delegation was not able to support the inclusion of this article since the provisions were too broadly expressed.

231. The representative of Canada stated that he supported the principles contained in articles 4 and 8. He also referred to an overlap between the articles under consideration as suggested by the Technical Review. Self-identification and community acceptance were important elements and he referred in this respect to article 9. His Government supported the concept of self-government contained in article 21 though consideration was needed on how best to share the roles and responsibilities between States and indigenous communities. The first sentence of article 21 was linked to article 31 and could therefore be combined with it and placed in Part VII. With regard to the second sentence of article 21, he asked for clarification on how far back the right to compensation applied, considering that usually international law was not applicable retroactively. He also noted that the current wording might encompass causes or events in which the State had no involvement or damages arising from activities in another State. Article 33 could be combined with article 31 since they both dealt with self-government.

232. The representative of Colombia expressed support for the articles under consideration as a whole and emphasized the importance of the right of indigenous peoples to respect for their own juridical systems.

233. The representative of Brazil, with respect to article 4, expressed his concern that the term "legal systems" could lead to some misunderstanding, since it might suggest that indigenous people would have juridical systems independent from national legislation. He considered it more appropriate, from a legal point of view, to refer to "customs and traditions for settling internal disputes". On article 8, he supported the recognition of collective rights. He also agreed with the principles contained in articles 21 and 33.

234. The representative of Mexico suggested replacing "while retaining" by "without detriment to" and deleting "if they so choose" in article 4.

235. The representative of the United States of America believed it was important to emphasize that all indigenous people had the right to maintain and develop distinct ethnic, social and cultural characteristics, including a right to self-identification. His Government also endorsed the concept that indigenous people should be able to participate in the political, economic, social and cultural life of the State. However, certain aspects of these articles needed to be reformulated. His Government also supported the goals embodied in article 21 but certain of the provisions needed to be narrowed and clarified.

236. The observer for the Lummi Indian Business Council called upon the working group to adopt the articles under consideration as drafted considering that the rights therein were inherent.

237. The Aboriginal and Torres Strait Islander Social Justice Commissioner, in a joint statement with two other Aboriginal organizations, said that he had some difficulties in discerning a common theme when considering articles 4, 8, 21 and 33, which suggested the need for a consensual approach to the methods of work of the working group. He considered the articles to be absolute minimum standards and urged their adoption without amendment. With regard to indigenous legal systems and juridical customs as laid down in article 33, he referred to articles 8 and 9 (1) of ILO Convention No. 169. He said that recognition of indigenous laws and customs was not only an issue of indigenous heritage and pride but could also be an issue of survival considering that they were an inseparable part of indigenous identity. This recognition was not equivalent to being sensitive to or making allowances in their legal process for the differences among the various ethnic groups now making up Australia. Self-identification as laid down in article 8 was widely recognized in international human rights law and he referred in that regard to article 1 (2) of ILO Convention No. 169. He also referred to articles 8 and 9 of that Convention and to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 21 of the draft declaration recognized the right of indigenous peoples to be secure in the enjoyment of their means of subsistence and to engage in traditional and other economic activities. He referred to related provisions of international human rights law including article 25 of the Universal Declaration of Human Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights, article 12 of the Convention on the Rights of the Child and articles 2 (1), 14 (1) and 23 of ILO Convention No. 169. He did not understand the difficulties States had in contemplating compensation for gross and systematic violations of human rights considering that the international community clearly recognized the existence of such an obligation. He referred in that respect to the jurisprudence of the Human Rights Committee under the Optional Protocol, the jurisprudence of the Inter-American Court of Human Rights in the case of Aloeboetoe v. Suriname and the revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by the Special Rapporteur Theo van Boven.

238. The representative of the Russian Federation stated that the language of article 4 was acceptable provided that the ways and means were clarified. Self-identification as contained in article 8 was acceptable as a principle as long as the demands of national legislation were taken into account and it did not form an impediment. Article 21 should be considered jointly with article 31 and the "systems" referred to should be discussed within their national and local settings. Article 33 was acceptable provided that the institutions referred to were compatible with those existing within the State structure.

239. The representative of Japan stated there had to be equality before the law in a State and this posed a problem with regard to accepting separate "legal systems" as referred to in article 4. He also considered the collective

right contained in article 8 as problematic. With regard to article 21, he said that compensation was regulated under national law and called for the clarification of article 31.

240. The representative of Australia stated that his Government had no serious problems with articles 4 and 33 but requested clarifications concerning the meaning of "political and legal systems". With regard to article 8, he also stated that this did not constitute any serious problem and reiterated the futility of finding an all-embracing definition of indigenous peoples; applicability should be left to national determination.

241. The representative of Chile stated that the groups of articles under consideration highlighted the importance of preserving the customs and traditions of indigenous people. He felt, however, that article 4 needed more detail and clarification with regard to the scope of the political and juridical institutions contained in the article. He supported the current drafting of article 8 and the spirit of articles 21 and 33. He felt in general that the final draft should have greater clarity.

242. The observer for the Indian Confederation of Indigenous and Tribal Peoples said it was distressing that several Governments had stated that the provisions of the draft should be in conformity with international human rights law and domestic legislation. The draft looked to the future and international and domestic laws would have to work towards the same level. He urged the working group to adopt the draft as is stood, especially articles 4 and 8 since they were crucial for the survival of indigenous peoples.

243. The observer for the Grand Council of the Crees stated that the words "maintain and develop" were very important since they recognized that indigenous peoples' societies were not frozen in time but like any other society were evolving entities. He opposed combining article 21 with article 31 since one dealt with development and subsistence while the other dealt with self-government. The question of how far back compensation had to be paid was the same as asking how far back law applied. The argument that international law did not apply retroactively did not hold ground since compensation was by definition retroactive.

244. The representative of Ukraine said that the implementation of article 4 could lead to the existence of contradicting legal systems. There was a possible overlap between article 4 and articles 8, 21 and 33. With regard to article 8, criteria were necessary to identify indigenous peoples at least in non-colonial situations.

Articles 25 and 26

245. The observer for the International Organization of Indigenous Resource Development proposed language for articles 25 and 26 reading out the text of the articles as adopted by the Sub-Commission.

246. The observer for the MAA Development Association called for the adoption of articles 25 and 26 as they stood considering that the ownership and control of lands, territories and resources were essential to the exercise of the right of self-determination and health of indigenous communities. It was the

birthright of indigenous peoples to take control of their lands, that sacred lands be excluded from transfer or sale, that they be compensated for loss of their lands, that they be permitted to proceed in accordance with their own values, social structures and at their own pace in developing their lands. States should enact legislation to ensure that there were no prospecting activities on indigenous lands without their consent.

247. The observer for the Grand Council of the Crees stated that article 25 was intended to preserve and strengthen the intimate relationship indigenous peoples had with their lands and territories which connected the use of lands and resources with a responsibility to care for and preserve those resources for future generations. The phrase "which they have traditionally owned or otherwise occupied or used" was employed to avoid the technical objection put forward by some States, that indigenous peoples did not have proper title to their lands and therefore no land rights. He also said that article 26 elaborated upon and implemented article 25 in a way consistent with Agenda 21 of the United Nations Conference on Environment and Development. He said that the matters dealt with in articles 25 and 26 clearly required protection under international law.

248. The observer for the International Indian Treaty Council stated that land was indigenous peoples' sacred mother, life giver and the source of their survival, and therefore articles 25, 26 and 3 were the heart and soul of the draft. She therefore called for the adoption of these articles as drafted considering that they were an integral part of a draft declaration which reflected the minimum standards of protection of the rights of indigenous peoples.

249. The observer for Sweden recognized the intimate relationship indigenous peoples had with their lands and therefore supported the inclusion of such recognition in the declaration. However, the declaration should reflect that there were many different forms of land rights in the world. She would like further discussion of the meaning of the word "strengthen" as contained in both articles 25 and 26 and suggested replacing the phrase "own, develop and use" in the first sentence of article 26 with the phrase "own, develop or use". The representative of Australia agreed with the intent of articles 25 and 26 but said that a closer look was warranted in light of law and practice.

250. The observer for the Upper Sioux Community stated that the draft was aimed at expanding the applicability of human rights so as to include indigenous peoples and sought to redress the violation of the individual and collective rights of indigenous peoples. He also said that self-determination was an inherent right of all peoples. Therefore, he called for the adoption of articles 25 and 26 as they stood.

251. The representative of Canada stated that lands and resources were of fundamental importance to indigenous peoples and that the declaration must reflect this importance while at the same time take into account the many different land arrangements that existed. She said that the French text of articles 25, 26 and 28 did not correspond with the English text. She also said that the terminology of article 25 needed more discussion. She recognized that the term "lands" would refer to those areas which indigenous people might own or have exclusive use of and the rights to resources thereon,

while the term "territories" would refer to those areas which indigenous people did not own and did not have exclusive use of but where they could conduct their traditional lifestyle in accordance with domestic law. With this understanding, indigenous people had the right to own, control, develop and use their lands and resource, including the right to use their own land tenure systems and institutions for resource management and development, to standards consistent with domestic laws. She considered that article 26 was one of the more complex provisions. The recognition of laws, customs and traditional land tenure systems and institutions was related to self-government and should be considered in this context.

252. The representative of the United States of America stated that his Government supported the goal embodied in article 25 but its language was overly broad and imprecise. His Government would endorse a provision encouraging States to protect the distinct spiritual relationship and material relationship which existed between many indigenous groups and their lands, territories, waters and other areas. He also expressed his support for the general goals set forth in article 26. However, the intention of article 26 to cover all the many different situations involving indigenous land claims in every part of the world was overly broad. For example, the United States could not agree with the blanket authorization of ownership of all lands "traditionally owned or otherwise occupied or used". His delegation did support the inclusion of language calling upon States to consider the possibility of negotiated land settlements.

253. The observer for Comisíon Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos said that one should not place a rigid limitation on the spatial aspect of territories since the relationship indigenous peoples had with their territories and the environment transcended space and time. Indigenous peoples must be able to manage their resources since this would allow them to control their lives and future. Restitution of territories was therefore of crucial importance.

254. The representative of Japan stated that the phrase "distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources" as laid down in article 25 was unclear to his delegation and should be qualified. With regard to article 26, he pointed out that the use of land was prescribed by national legislation.

255. The observer for the Indigenous World Association called for the adoption of the articles in their present form considering that they were valid rights of indigenous peoples. The representative of the World Council of Indigenous Peoples said that lands and territories were the foundation of the survival of indigenous peoples and that this link was recognized by the ILO and the Organization of American States. He expressed his agreement with articles 25 and 26 since they laid down the non-validity of the concept of terra nullius.

256. The observer for the Organisation for Survival of Illaikipiak Indigenous Maasai Group Initiative urged the working group to adopt articles 25 and 26 as currently drafted since they were of vital importance to the draft declaration which in turn determined the future of indigenous peoples.

257. The observer for Finland stated that his Government could accept article 25 but that article 26 should be flexibly drafted to allow for national solutions for the ownership of lands. The observer for Norway noted with respect to all the articles that dealt with land rights in the draft, including articles 25 and 26, that land rights were one of the areas where it was essential to find flexible language which could accommodate the various land rights situations in the world. However, this flexibility must be accompanied by strong protective language.

258. The observer for Fiji referred to paragraph 32 (f) of the Copenhagen Declaration on Social Development which said that States should recognize indigenous peoples lands. He also referred to paragraph 75 (g) of the same document which referred to the empowerment of indigenous peoples to take decisions in matters concerning them and considered this recommendation to be relevant to article 4.

259. The observer for the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests stated that indigenous lands and knowledge were seen as commodities. Since the lives of indigenous peoples were tied to their lands, he called for the adoption of articles 26 to 30 as they were currently drafted. He called on States to decentralize so that indigenous peoples could contribute to solving problems of poverty and the environment. He felt that peaceful existence through agreements with Governments was possible.

260. The observer for the Movimiento Indio Tupaj Katari said that the problems of indigenous peoples could not be solved without solving the problems of indigenous lands, territories and resources since these were crucial to their survival. It would also be impossible to solve these land questions without fully understanding the problems relating to the globalization of trade and the activities of transnational corporations, which he considered to be in violation of the right of permanent sovereignty over natural resources. Articles 25 and 26 had to be strengthened.

261. The observer for the Finno-Ugric Consultation Committee stated that lands and territories were vital to the survival of indigenous peoples and called for the early adoption of the articles under consideration, as did the observer for the Association nouvelle de la culture et des arts populaires. The observer for the International Organization of Indigenous Resource Development also called for the adoption of articles 25 and 26 considering that an adequate land base was essential to the survival of indigenous peoples and expropriation the most powerful tool of destruction. He suggested language for the articles by reading out the text as currently drafted.

262. The observer for the New South Wales Aboriginal Land Council, in a joint statement with several other Aboriginal organizations, said that the articles under consideration should be analysed within the context of the draft declaration as a whole. The draft contained aspirations and should not be the lowest common denominator. In light of this, he called for the adoption of the articles as drafted.

263. The observer for the Central Land Council stated that articles 25 and 26 were essential to the draft as a whole considering that the absence of

indigenous control over their lands was the cause of the situation they were in. She supported the assertion that national law was not relevant in this respect. The phrase "other resources" as found in both articles was very important considering that indigenous peoples' knowledge was under threat from multinational companies. Indigenous peoples should be recognized as guardians of their lands.

264. The representative of Brazil stated that his Government had no difficulties with the principles contained in articles 25 and 26 but suggested using the present tense of the phrase "owned or otherwise used or occupied".

265. The observer for the Confederación Sindical Unica de Trabajadores Campesinos de Bolivia stated that the affirmations contained in articles 25 and 26 were correct and should be retained as drafted. Indigenous peoples were alive thanks to the respect they had for their lands and the environment and this was affirmed by article 15 (1) of ILO Convention No. 169. The observer for the MAA Development Association stated that the issue of land rights was a delicate, complex and sensitive issue since it directly affected the livelihood of indigenous peoples. He said that indigenous peoples were uniquely qualified in the area of preservation and called for the adoption of the articles under consideration as they were currently drafted.

266. The observer for the Indian Law Resource Center stated that the grouping of articles was harmful since it had led to deletions and amendments. The draft consisted of 45 distinct articles and 19 preambular paragraphs that had to be analysed within the framework of the draft as a whole. A general dialogue on the fundamental issues was therefore necessary. Article 19 on participation and article 20 on consent were relevant to both substance and procedure with regard to the specific requests by indigenous peoples for full participation in the working group. She fully supported articles 23, 4 and 8 and said with regard to articles 25 and 26 that the relationship indigenous peoples had with their land was unique among the peoples of the world.

267. The observer for the Consejo de Todas las Tierras said that indigenous territories were the means through which indigenous peoples transferred their culture and that articles 25 and 26 recognized this. It would not be appropriate to consider these articles within a legal framework, since they would then be considered a threat to States, but rather within a framework of cultural diversity and universal reality.

268. The observer for the Ainu Association of Hokkaido stated that the distinctiveness of indigenous peoples did not have to be measured by anyone other than indigenous peoples themselves. Articles 25 and 26 were a vital part of the draft and should be adopted as they were drafted.

269. The observer for the Aboriginal and Torres Strait Islander Commission stated that articles 25 and 26 recognized the unique relationship indigenous peoples had with their land and resources which were of critical importance for their survival and the exercise of the right of self-determination. Article 25 stated the obvious and confirmed existing human rights law. He referred in this respect to article 17 of the Universal Declaration of Human Rights, article 5 of the International Convention on the Elimination of All Forms of Racism, the General Comment of the Human Rights Committee on

article 27 of the International Convention on Civil and Political Rights and article 31 of ILO Convention No. 169. He concluded that article 26 elaborated and implemented article 25 and that both should be adopted as they stood.

Articles 27, 28 and 30

270. The observer for the International Organization of Indigenous Resource Development proposed language for articles 27, 28 and 30 by reading out the text of the articles as adopted by the Sub-Commission. The observer for the Indigenous World Association called for the adoption of the articles in their present form since they were valid rights.

271. The representative of Ukraine expressed her reservations regarding articles 25 to 28 and 30 and said that land rights had to be placed in the context of national legislation to avoid confusion especially with regard to non-colonial situations.

272. The representative of France stated that his Government had serious difficulties with article 27 because of the legal and practical implications of the phrase "compensation shall take the form of lands, territories and resources equal in quality, size and legal status". The lack of nuance in article 28 implied that indigenous peoples had a right of veto.

273. With regard to article 27, the observer for Sweden called for clarification of the phrase "free and informed consent" and the possible retroactive application of compensation. In connection with article 28, she said that the role of indigenous peoples in environmental conservation had been recognized in chapter 26 of Agenda 21. She requested, however, clarification with regard to the term "military activities". The second paragraph of article 28 was very important. The activities covered by the article could be undertaken in special circumstances. With regard to the third paragraph, health issues were also covered by other articles, for example article 19.

274. The representative of Colombia stated that the articles under consideration were linked to articles 25 and 26. Her Government agreed with their wording since they were in line with domestic law and practice. The concept of "territories" was compatible with the notion of unified States which allowed for diversity. The representative of Japan said that the use of land was subject to national discretion.

275. The observer for the Grand Council of the Crees stated with regard to article 27 that a thief never rested comfortably and securely with his loot since the ownership and title of something that was obtained under questionable circumstances was tainted. The function of article 27 was to reverse the process of dispossession by returning something to the original owners and where this was not possible to compensate for its loss. Although article 28 appeared to deal with seemingly unrelated issues, the unifying theme was that all the elements of article 28 were part of the continuing destruction of the total environment, lands and territories of indigenous peoples. Article 28 attempted to prevent this abuse and reverse the damage done. Article 30 attempted to reverse the "development syndrome", whereby

indigenous ownership rights to lands and resources were disregarded to allow for development, by recognizing the right of indigenous peoples to give or withhold consent.

276. The observer for the Lumad Mindanaw Peoples Federation called for the adoption of the articles under consideration as they stood. The intent of the draft was to establish equality in the enjoyment of human rights and the exercise of the collective right of self-determination was a precondition for the survival of indigenous peoples. The observer for the Lummi Indian Business Council also called for the adoption of the articles as they were.

277. The observer for the Organización de la Nación Aymara stated that it was very important to know what the draft contained so as to avoid confusion when analysing the articles. The contents were not a declaration of rights but rather aimed at the reparation and restitution of rights. Speedy adoption was necessary since peoples were disappearing.

278. The observer for the Mejlis of Crimean Tatar People said that all the articles had a distinct meaning. He supported their adoption as currently drafted and called for the insertion of implementation mechanisms. The observer for the Association nouvelle de la culture et des arts populaires pondered the importance of the recognition of the concept of "identity" and called for the adoption of the articles as they stood.

279. The representative of Canada stated that his Government felt strongly that adequate processes for dealing with land claims and related resource issues should be available for indigenous groups. States should provide arrangements for dealing with valid claims and consideration should be given to a reference to this effect in article 27. With respect to compensation, consideration might also be given to alternatives other than the ones mentioned in the article. With regard to article 28, consideration might be given to separating the environmental from the military issues dealt with in article 28. The article needed to reflect international as well as domestic standards on environmental matters and therefore the article might indicate that indigenous people had the right to the productive capacity of their lands. With regard to the second paragraph of the article, some groups might be willing to accept hazardous materials on their lands as a means, for example, of generating economic activity. This would require full and informed consent. The same was true for military exercises. Suggestions for reordering the text were offered.

280. The representative of Brazil stated that his Government had no difficulties with the inclusion of article 27 in the declaration since it was consistent with national law and practice. Brazil supported the goal of article 28 but in Brazil the military had played a positive role in the protection of indigenous people. He therefore called for revision of the second sentence of the first paragraph of the article. With regard to the third paragraph of the article, he suggested that its wording should reflect the idea that indigenous people should be active and informed participants in programmes for monitoring, maintaining and restoring their health. With regard to article 30, although his Government supported the idea, it would be more appropriate, from a legal point of view, to affirm that indigenous people had the right to require that States take account of their free and informed

opinion in the approval of any project affecting their lands and their resources. Finally, he stated that his Government was of the opinion that the concept of "spiritual impact" was included in "cultural impact" and could therefore be deleted.

281. The representative of the United States of America noted that article 27 overlapped with a number of other provisions, including article 7 (b), 10 and 26, and some of these articles could therefore be consolidated in order to clarify and strengthen the text. With respect to these articles, the United States supported a clear recognition of the right of ownership and possession of lands or property which indigenous people occupied or possessed, and of the need for adequate legal procedures to ensure that claims of confiscation or use were fairly resolved. He doubted, however, whether restitution was a viable means for resolving such issues in most States. With regard to article 28, it could not be assumed that States were absolute environmental guarantors. He felt it would be more appropriate to urge States to take measures to help indigenous communities preserve their environment. Article 30 could be improved by encouraging governmental regulatory processes affecting large-scale projects to be designed so that the people affected had substantial input into the decision-making process.

282. The observer for the International Indian Treaty Council stated that the articles under consideration should be adopted as they stood considering that they were an integral part of the draft, which was a minimum standard for the protection and promotion of the rights of indigenous peoples. She stated that negotiated settlement was a process whereby two equal parties freely entered into an agreement on the basis of their free and informed consent and therefore a Government could not be negotiator and judge at the same time.

283. The representative of Japan stated regarding articles 27 and 30, that the use of land should be decided in accordance with the domestic law of a State. Her Government felt that these articles need further consideration.

Articles 36, 37 and 39

284. The observer for Sweden said that in order to move towards giving full effect to the provisions in the draft declaration greater clarity and a more distinct legal language were necessary in many of the articles. Some legal concepts in the draft would have implications for Governments beyond the draft declaration if those concepts were not defined or restricted.

285. The representative of Canada stated that article 36, which dealt with the recognition and enforcement of treaties and agreements between States and indigenous people, was an important provision of the draft declaration. He also emphasized that valid treaties and agreements should be honoured. However, treaties with the indigenous people of Canada were domestic rather than international agreements and disputes over their interpretation or implementation should therefore be dealt with in domestic forums. The representative said that her Government acknowledged that "original spirit and intent" was an issue in treaty interpretation, and that the interpretation must reflect the intent of both parties. However, Canada had reservations with regard to the reference to "spirit and intent" in article 36 as the fundamental criterion for interpretation of treaties, and that it therefore

should be made clear that "spirit and intent" was only one of a number of factors that needed to be considered when dealing with such treaties. As to article 37, he expressed the view that the provisions of the declaration should give guidance to States, and not impose mandatory measures. It should recognize the obligation on States to take effective measures as appropriate, to the maximum of their available resources, and in consultation with indigenous people. Such flexible implementation would be consistent with the provisions included in article 34 of ILO Convention No. 169 and article 2 of the International Convention on Economic, Social and Cultural Rights. With regard to article 39, Canada supported the principle that domestic legal processes should take into account the customs and traditions of indigenous people where appropriate, including both criminal and civil law and a broad range of dispute-resolution methods. The question of indigenous "legal systems" was one which should be the subject of negotiations between States and indigenous people.

286. The observer for Finland expressed full support for articles 36, 37 and 39. As to article 37, the Government was of the opinion that the rights recognized in the future declaration should be adopted and included in national legislation.

287. The representative of Colombia expressed support for articles 36, 37 and 39. As to article 37, reference was made to article 6 of ILO Convention No. 169. With regard to article 39, the representative emphasized the importance of the second part of the article and proposed that the words "with priority" should be added between the words "take into consideration" and "the customs" in the last sentence.

288. The representative of Venezuela expressed reservations with regard to the words "to competent international bodies" in article 36, and said that her Government considered agreements between States and indigenous peoples as national agreements which should be settled in competent national bodies.

289. The representative of France expressed reservations with regard to the wording of the second sentence of article 37, in which it is stated that rights recognized in the provision "shall be adopted and included in national legislation". The use of the word "shall" indicated that this was a convention and not a declaration.

290. The representative of Chile expressed support for the general thrust of articles 36, 37 and 39. However, the language of article 39 should be reconsidered, and it was necessary to have a more precise concept for the resolution of conflicts and disputes, which was a domestic issue.

291. The representative of Brazil expressed support for article 36 and proposed that it should be stated in the article that indigenous people shall have access to legal mechanisms. Brazil had no difficulties in accepting the principles of article 37. With regard to article 39, the expression "mutually acceptable" could create misunderstanding and required some clarification.

292. The representative of the United States of America referred to its statements during the first session (1995) of the working group, which fully reflected the preliminary positions of the United States. As to article 36,

the United States supported the principle of having States honour their treaties and agreements with indigenous people. In the United States treaty rights were legally enforceable obligations. However, treaty rights varied greatly in character and in general were not enforceable in international tribunals, owing to the fact that they did not give rise to rights under international law. With regard to article 37, the United States supported the spirit of the article, which could be adopted with certain changes. Any rights recognized in the declaration should be recognized in domestic legislation, in particular where they were not already provided for under national law. As to article 39, the United States supported a text encouraging the use of alternative dispute-resolution procedures which were acceptable to all parties. Indigenous people also had the right in common with all other members of the community to equal access to independent and impartial mechanisms of dispute settlement including tribunals, as specified in article 8 of the Universal Declaration of Human Rights.

293. The observer for the International Organization of Indigenous Resource Development expressed his support for articles 36, 37 and 39 and read out the present text of those articles. He suggested that the present text should remain unchanged.

294. The observer for the Grand Council of the Crees emphasized the importance of article 36, in which it is stated that indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States. States should respect and implement the treaties they had entered into with indigenous peoples. The importance of article 36 was that it required States to respect their legal obligations and it provided for a means to settle treaty disputes at the international level. This was important because at present States acted as the judges of their own acts. Moreover, the sheer number of broken treaty provisions suggested that the State was a very lenient judge of its own acts. The very existence of dispute-resolution mechanisms at a higher level would help to obtain respect for these instruments.

295. The observer for the Aboriginal and Torres Strait Islander Commission presented a joint statement, on behalf of indigenous organizations and indigenous representatives of Australia, in which he expressed his strong support for articles 36, 37, and 39 and urged their adoption as currently drafted. With regard to article 36, the observer emphasized the importance of treaties and called upon the Australian Government immediately to commence good faith negotiations to establish processes for an agreement of reconciliation. As to the second sentence in article 37, it was said that the language was identical to the language of article 7 of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. With regard to article 39, he referred to international human rights instruments which established individual complaints procedures, such as the first Optional Protocol to the International Convention on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, it was said that the complaints procedure pursuant to the Racial Discrimination Convention contemplated the submission of complaints not only by individuals, but also by groups concerning violations of their rights under the Convention.

296. The observer for the International Indian Treaty Council expressed her strong support for articles 36, 37 and 39 and called for the adoption of the draft declaration in its entirety, as minimum standards, without any changes, amendments or deletions whatsoever. As to article 36, she emphasized the importance of the recognition, observance and enforcement of nation-to-nation treaties as well as other types of agreements and constructive arrangements which indigenous peoples had freely entered into with States.

297. The observer for the Indigenous World Association and the Comisión Jurídica de los Pueblos de Integración Tahuantinsuyana both expressed their strong support for articles 36, 37 and 38 and called for their adoption without any changes, amendments or deletions, as minimum standards.

Articles 35, 38, 40 and 41

298. The representative of France said that the wording of article 35 was very broad and should spell out the concepts more clearly.

299. The representative of Colombia proposed the following amendment to the first paragraph of article 35: "Indigenous peoples that live in territories divided by two or more States, or that share the said territories, have the right to maintain their cultural unity, maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes between its members or social groups, and with other peoples across borders."

300. The representative of Chile expressed general support for article 35. As to article 38, there was a need for more clarity, in particular with regard to the objectives of the "assistance" mentioned in the article. This was closely connected to the concept of self-determination. With regard to articles 40 and 41, the representative expressed support for the general spirit of the articles but considered that article 40 needed clarification to define how intergovernmental organizations could contribute. As for article 41, the representative stressed the importance of establishing a permanent forum within the United Nations.

301. The representative of Venezuela stated that, in article 35, the terms "contacts", "relations" and "cooperation" needed clarification since they could be interpreted as referring to international relations which was a domain reserved for the State. The representative said she had reservations about article 38, in particular the right to financial and technical assistance from States which might imply that indigenous people could obtain international cooperation without going through the competent State organs.

302. The representative of Australia expressed general support for article 35, but said he would wish to clarify the possible suggestion that there might be an obligation on the part of States to provide the practical means to "ensure" the exercise of the right, for example by providing transport to facilitate the contacts referred to. As to article 40, a formulation similar to that in article 9 of the Declaration on Minorities might better achieve the purpose of ensuring the effective involvement of

organs and agencies of the United Nations system in the implementation of the draft declaration. With regard to article 41, Australia would reserve its position.

303. The representative of Canada noted that earlier versions of article 35 had spoken of the right of indigenous people to maintain international contacts with other indigenous people. However, the current draft referred simply to the right to maintain international contacts with other people, which was generally considered a right of States. Unless the reasons for the change could be clarified, he suggested it might be appropriate to re-insert the word "indigenous". He further suggested that States should only be required to "facilitate" this right, and that its exercise should be subject to reasonable and universal border control measures. He expressed the view that article 38 created an open-ended obligation to fund indigenous development, and that a progressive, flexible approach would be more appropriate. With respect to article 40, he supported the involvement of the United Nations and other intergovernmental organizations within their fields of competence, as well as the particpation of indigenous people on issues directly affecting them. Finally, he expressed the view that article 41 would require further consideration, as declarations are not normally the vehicle for creating United Nations bodies.

304. The representative of the United States of America expressed support for article 35, and stated that transboundary contacts were important and should be encouraged, subject to non-discriminatory enforcement of custom and immigration laws. As to article 38, international law did not provide a legal obligation to provide financial support. The United States could accept a text providing that resource transfers should be encouraged by the State and that States may as a matter of discretion agree to the provisions of such assistance. With regard to article 40, implementation of the declaration should be largely the responsibility of States, although United Nations bodies may be called upon to help. As to article 41, the United States was of the opinion that the text might be strengthened by adding a phrase similar to that in article 9 of the Declaration on Minorities which provided that "specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields."

305. The representative of Brazil expressed support for article 35 and agreed that indigenous people had the right to maintain and develop contacts, relations and cooperation with others across borders. He proposed the following wording of article 35: "Indigenous people divided by international borders have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their fellows across borders, in accordance with national border regulations." As to article 38, he proposed to add "in accordance with national legislation" after the words "technical assistance". Brazil fully supported article 40. As to article 41, Brazil reserved its position concerning the creation of a permanent body on indigenous issues.

306. The representative of Japan expressed support for the view expressed by the representative of Brazil with regard to articles 35 and 41. As to article 38, further clarification was required from the viewpoint of equality under the law.

307. The observer for the International Organization of Indigenous Resource Development expressed his support for articles 35, 38, 40 and 41 and read out the present text of those articles. He suggested that the present text should remain unchanged.

308. The observer for the Ainu Association of Hokkaido referred to an earlier statement by the representative of Japan concerning article 38. He said that the Government's concern that special provisions for the Ainu people would jeopardize the principle of equality under the law in relation to the rest of the population was not tenable. Similar special measures were already practised in Japan in order to ensure that other disadvantaged groups could enjoy to the fullest extent their fundamental human rights and freedoms.

309. The observer for the Saami Council expressed support for articles 35 and 38 and said that no conceptual changes should be made in the current text.

310. The observers for the Consejo de Todas las Tierras, the Aboriginal and Torres Strait Islander Commission, the Association nouvelle de la culture et des arts populaires, the Indigenous World Association, the Organisation for Survival of Illaikipiak Indigenous Maasai Group Initiative and the Lummi Indian Business Council all called for an adoption of articles 35, 38, 40 and 41 in their present form, without any changes, amendments or deletions.

Articles 3, 31 and 34

311. The observer for the International Organization of Indigenous Resource Development suggested specific wording for articles 3, 31 and 34 by reading out the text of the articles in the draft. He re-emphasized his support for the repeated calls to adopt the draft declaration as adopted by the Working Group on Indigenous Populations and the Sub-Commission and that it be referred to the Commission on Human Rights, the Economic and Social Council and the General Assembly for approval and passage. He noted that all the articles, especially those on self-determination, treaties, indigenous government, consent, land and resources, economic, social and cultural development, education, medicine, spiritual recognition, language and culture were very important to them as recaptured rights and minimum international standards and he requested the recognition of these and all 45 articles in a spirit of cooperation and partnership.

312. The representative of Colombia agreed with the formulation of articles 3 and 31 and supported the present wording, as the articles duly clarified the concept of self-determination being applied in Colombia with respect to the internal autonomy of indigenous peoples, self-government and self-determination. This was included in national legislation and article 6 of the Colombian Constitution. She noted that self-determination was the cornerstone of the draft declaration and that it did not clash with State sovereignty.

313. The observer for the Saami Council stated that she regarded articles 3, 31 and 34 as dealing with the principle of the right to self-determination as a major principle and concern of the draft declaration along with the principle of the rights over land and related resources. She referred to the statement by the observer for Finland during the general debate, in which he referred to Recommendation No. XXI (48) of the Committee on the Elimination of Racial Discrimination, which emphasized the distinction between internal and external aspects of self-determination. She concurred with this statement because it reflected the opinion of how self-determination should be understood in current international law.

314. The representative of the Philippines stated that her Government did not have much problem with articles 3 and 31 but that it did have reservations about the notion of collective rights of indigenous communities contained in article 34 and elsewhere. Her Government believed that self-determination provided an important basis for the realization of the civil, political, economic, social and cultural rights of indigenous people and that it could only be exercised within a defined area (ancestral domains) and that it must respect a State's territorial integrity. She referred to provisions in the Philippine Constitution that recognized and protected the rights of indigenous cultural communities to their ancestral lands. Her Government agreed with the major thrust of the draft declaration but it needed some improvement. It could be shortened to add to its impact and the Declaration on Minorities could serve as a model.

315. The observer for the Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos stated that every people has an inherent right to select its own destiny and that the right to self-determination was vital for the enjoyment of other rights of indigenous peoples.

316. The observer for the International Indian Treaty Council recommended and called for the adoption of the draft as adopted by the Sub-Commission in its entirety and without changes, amendments or deletions as minimum standards protecting and promoting the rights of indigenous peoples. She wanted to put on record her opposition to any changes whatsoever in the text or wording of articles 35, 38, 40 and 41 as well as articles 3 and 31 as they were integral and essential parts of the entire document as it stood. She also stressed the importance of article 35 and the vital importance to the entire meaning, significance and validity of the document of article 3 of the current text.

317. The representative of Bolivia stated that this group of articles essentially referred to the right of self-determination and that it was particularly important to emphasize the conceptual scope and practical effects. He referred to the background of the article, specifically article 8 of ILO Convention No. 169. He reaffirmed support for the wording of article 3 in the framework of a consensus.

318. The representative of Venezuela shared the thrust and intent of articles 3 and 31 but noted that there was an element of repetition in the articles and suggested that they be merged into one article which would state, "Indigenous peoples have a right to self-determination. By virtue of that right they have the right to autonomy, or self-government in matters relating to their internal and local affairs, including culture, religion, education,

information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions". This would achieve brevity and clarify the right of self-determination.

319. The observer for the Indigenous World Association supported the language contained in articles 3, 31 and 34 and insisted on their adoption. He said that article 3 formed the cornerstone of the declaration, that it must not be diluted or altered from its present form and that indigenous peoples had the collective right to exercise autonomy and self-government over all political and socio-economic matters regarding the well-being of their people within their external boundaries.

320. The representative of Chile stated that these articles presented the greatest difficulties in the declaration and that it was important to reach consensus on the concepts therein. The meaning and interpretation of the right of self-determination needed clarifying; he understood it to refer to internal self-determination, in conformity with ILO Convention No. 169, particularly article 7.

321. The observer for the Association of Shor People supported the declaration without the introduction of any changes, amendments or dilutions. He stated that article 3 was crucial to his people.

322. The observer for the Movimiento Indio "Tupaj Katari" stated that the implicit recognition of the right to self-determination constituted the legal basis on which all provisions of the draft declaration were based and that it was an inherent right.

323. The observer for the Mejlis Crimean Tatar People stated that the right of self-determination of indigenous peoples was based on article 3 as well as articles 8, 9, 19, 20, 21, 33, 36, 37, 39, 40 and 41, which all represented different aspects of the right to self-determination. He emphasized his support for these articles and stated that he supported the integrity of the Ukrainian State and that secession would be dangerous to all peoples.

324. The observer for the Commission for the Defence of Human Rights in Central America stated that articles 3 and 31 were essential to all indigenous peoples of the world as they were the basis of the whole draft declaration, and that it was only when they were recognized that just and democratic development for indigenous peoples could be achieved. He requested the adoption of the overall document without any amendments and called for the document to meet the aspirations of indigenous peoples as they were the interested parties.

325. The representative of the United States of America stated that article 3 presented the most difficult question arising out of the declaration. He said that while his Government recognized the right of tribal self-determination as a matter of law domestically, they had certain difficulties with its use internationally in this context, as under contemporary international law the term self-determination was open to varying interpretations, depending on the specific context. The reference to the term

"self-determination" in an international context went beyond existing law, its meaning was not clear and there was no international consensus on its meaning. Concerning article 31, indigenous peoples should have the right, acting in community with members of their group, to enjoy a broad scope of self-government in their social, cultural, religious, economic and internal arrangements. However, the text as drafted went too far and needed to be clarified. Concerning article 34, indigenous people living in defined communities should have the ability to adopt legislation defining the responsibility of the individual to the community, provided that it was consistent with internationally recognized human rights standards.

326. The observer for the New South Wales Aboriginal Land Council presented a joint statement on behalf of some of the indigenous organizations of Australia. He stated that indigenous peoples, like all other peoples, possessed the right to self-determination and that to assert otherwise would be untenable, discriminatory and racist. He stressed that article 3 was one of the cornerstones of the declaration and that it must be retained unaltered or the declaration would be worse than meaningless. He also stated that article 31 appeared to be a compromise as it only referred to some of the options open to people under international law, but that they reluctantly accepted it as part of the whole package of the text as presently drafted.

327. The observer for the World Council of Indigenous Peoples stated that the right of self-determination was the framework in which all other human rights could be secured and that Governments must adopt this principle as it stood. He pointed out that article 3 did not encourage secession but that, in connection with article 45 of the draft declaration, it specifically discouraged secession. Nonetheless, this right was unconditional and it should not be limited, amended or exclusive of any other right.

328. The observer for the International Organization for Indigenous Resource Development requested the adoption of articles 3, 31 and 34 without amendment. He pointed out that self-determination could be exercised in a manner consistent with the Declaration on Friendly Relations and that his organization did not agree in practice that the inevitable consequence of that right was the break-up of the current structure of nation States. Self-determination was the unifying doctrine of the declaration and any significant reduction in this right would defeat the declaration's purpose. He also urged the working group to engage in a general debate about the fundamental concepts of the declaration, such as self-determination and collective rights, before commencing an article-by-article redrafting.

329. The representative of France stated that article 3 posed the question whether the right to self-determination was exercised within a nation or by secession. The present wording of the text might lead to misunderstandings, it was discriminatory and contrary to the equality of all before the law, and some forms of self-determination seemed to create a State within a State which was contrary to the French Constitution. He shared the concerns expressed by the representative of the United States on article 34 and stated that it seemed to deprive citizens of rights before the law.

330. The observer for Fiji unequivocally supported article 3 and stated that it was pivotal to the entire declaration. He also stated that it should be read alongside article 45.

331. The observer for the Central Land Council stated that article 3 was fundamental to the success of the draft declaration as a whole, that any diminution would result in a rejection of the declaration as a whole by her people and that it was a precondition for the exercise of all rights in the declaration. She referred to common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and stated that a failure to recognize this right for indigenous peoples would violate the fundamental principles of equality and non-discrimination articulated in the Charter of the United Nations and elsewhere. She also stated that article 3 must not be altered.

332. The representative of Canada stated that the question of self-determination was central to the declaration, that the right of self-determination was fundamental to the international community and that its inclusion in the Charter of the United Nations and in the International Covenant on Economic, Social and Cultural Rights showed that it was important to the protection of human rights of all peoples. Canada, as a State party, was legally and morally committed to the observance and protection of this right. This right applied equally to all collectivities, indigenous and non-indigenous, which qualified as peoples under international law. He noted that international law did not clearly define "self-determination" or "peoples"; it was traditionally understood as the right of colonized peoples to statehood. However, a survey of State practice and academic literature suggested it was an ongoing right which was expanding to include the concept of an internal right for groups living within existing States, and which respected the territorial and political integrity of the State. As provided for in the Declaration on Friendly Relations, the right shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. The goal of the working group was to achieve a common understanding of this right and to reflect it in the wording of article 3. Canada accepted a right of self-determination for indigenous peoples which respected the political, constitutional and territorial integrity of democratic States and which was implemented through negotiations between States and indigenous peoples. Canada supported the objectives of the provisions in the draft declaration on the implementation of this right. With respect to article 31, Canada interpreted a right of self-government as a right of indigenous peoples to govern themselves in matters whose primary focus related to their lands and communities, and generally accepted the proposed range of matters over which self-government should extend. This right should be implemented through negotiated arrangement with States. Canada was prepared to recognize a role for the State, together with indigenous peoples, in financing the implementation of self-government. He called for further discussion to clarify the meaning of the terms "self-government" and "autonomy". He also noted the need to clarify the primacy of international human rights standards in relation to a number of provisions in the draft declaration, including article 34.

333. The observer for the International Work Group for Indigenous Affairs stated that human rights would have no meaning if the right to self-determination were diluted and that discussing internal and external aspects so as to reduce or strengthen the article was premature and counter-productive. He also stated that these articles should be retained in their existing form.

334. The representative of Brazil stated that he shared many of the concerns of the representatives of the United States and France. The Constitution of Brazil guaranteed self-determination but his Government had problems with the reference to the right to self-determination in the context of the draft declaration and it could not agree to the present drafting of article 3. He expressed the same concerns for article 31. The present language regarding autonomy and self-government would have to be modified and amended and it should not include a list because this would depend on the organization of the State. On article 34, his Government recognized the existence of collective rights but shared the concerns expressed by the Governments of France and Canada and proposed to introduce a safeguard to protect individual rights.

335. The observer for the Grand Council of the Crees pointed out that the United Nations had already recognized that self-determination was a right belonging to "all peoples" and thus it was also a right which belonged to the world's indigenous peoples. He emphasized that under the principles of universality and indivisibility the right to self-determination should not be limited, but he noted that a balance must be struck between respect for the right of self-determination and the need to protect the integrity and stability of States, as enunciated in the Declaration on Friendly Relations. He also welcomed the statement made by the representative of Canada.

336. The representative of Denmark expressed her support for the present wording of articles 3, 31 and 34. She also urged the Centre for Human Rights to finish the Manual of Indigenous Self-Government and to ensure its distribution to interested Governments and indigenous peoples as this would assist with the wider understanding of the issue.

337. The observer for the International Organization of Indian Resource Development thanked the representative of Canada for his intervention, particularly in his acceptance of the right of self-determination of indigenous peoples and his use of the term "indigenous peoples".

338. The representative of Japan stated that the concept of self-determination was set forth in the context of decolonization, mainly for colonized people who requesting independence from States, in other international human rights instruments and it was questionable whether the concept was equally applicable to a certain group consisting of a part of a national group. He shared some of the concerns expressed by the representative of Brazil on articles 3 and 31 and the concerns expressed by the representatives of Canada, France and Brazil on article 34.

339. The observer for the Chittagong Hill Tracts Peace Campaign stated that the right of self-determination was the heart of the draft declaration and that article 3 was consistent with common article 1 of the International

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. She urged the adoption of article 3 without any change, deletion or amendment.

340. The observer for Argentina stated that the present wording of the right to self-determination in article 3 was not acceptable. He referred to the Declaration on the Granting of Independence of Colonial Countries and Peoples and stated that he did not support self-determination in the external sense. He proposed adding a sentence to the effect that the declaration could not be interpreted as breaking up the unity of the State. He supported the principle and philosophy of article 34 but he agreed with the statements of the representatives of the United States and Brazil.

341. The observer for the Indian Law Resource Center confessed that she was completely astonished. While acknowledging the positive contributions by the Government of Canada and other Governments, it appeared that indigenous peoples and other States did not have even a tentative agreement on such fundamental concepts of the draft declaration as the right to self-determination and the need to balance individual and collective rights. In this regard, a further general debate on the fundamental issues and concepts of the declaration was needed. Specific suggestions included discussing the goals and purposes of the declaration, discussing what it really meant, further domestic consultations, focusing on the ways in which domestic law had to be changed in order to be in conformity with the standards of the declaration. She also acknowledged the positive work of the Chairperson in accommodating some of the requests of indigenous peoples and moving the work forward.

342. The Aboriginal and Torres Strait Islander Social Justice Commissioner reiterated his earlier statement that the unqualified recognition of the right to self-determination was absolutely fundamental to the integrity of the declaration. The right to self-determination was the pillar upon which all other provisions of the draft declaration rested and the language of article 3 must remain unaltered. He stressed that common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights was a right of all peoples and that to deny this right to indigenous peoples would be discriminatory and would demonstrate that the States Members of the United Nations viewed indigenous rights as inferior to those of other peoples. He acknowledged the statement by the representative of Canada. He proposed that there be a joint preparatory meeting to further discuss the methods of work of the working group and to plan the organization of work of the next session.

343. The representative of Colombia referred to the relationship between article 34 and provisions of the Colombian Constitution and the interpretation of these by the Constitutional Court.

344. The observer for the Cordillera Peoples Alliance stated that articles 3, 31 and 34 were the starting point of the declaration. She referred to the preamble of the Charter of the United Nations and article 1 of the International Covenant on Civil and Political Rights, and stated that the

realization of the lofty goals of the International Decade of the World's Indigenous People could only be attained if those articles were adopted without any diminution.

345. Two observers for the International Indian Treaty Council stated that self-determination was a right under international law and called for the speedy adoption of the draft declaration.

346. The observers for the Association nouvelle de la culture et les arts populaires, the Ainu Association of Hokkaido and the Movimiento Indio "Tupaj Katari" expressed in written statements their support for these articles.

Item 5 - Other matters

347. The representative of Bangladesh drew attention to the question of the participation of international intergovernmental organizations and agencies in the substantive work of the working group. The representative referred to an intervention made by the observer for the International Labour Office during the first week of the session on the matter of definition of the term "indigenous peoples", and said that the statement went beyond the competence of the ILO secretariat. The representative informed the working group that the response provided by the ILO secretariat, at the request of Bangladesh, had not put their concerns to rest. Moreover, the secretariat was not the respository of the substance of the ILO conventions, and had no authority to define or interpret issues of any of the conventions, which was the prerogative of the parties to the conventions.

348. The observer for the Indian Law Resource Center said that the statement made by the representative of Bangladesh demonstrated the need for further general debate, as well as addressing the outstanding issue of indigenous peoples' participation in the working group.

349. The observer for the International Organization of Indigenous Resource Development referred to unfortunate events which had occurred in the course of the session and expressed the hope that those events would not have any impact on the establishment of a permanent forum for indigenous peoples within the United Nations.

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